

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~306~~ 9

THE NEW ORLEANS, MOBILE AND TEXAS RAILROAD COMPANY ET AL., APPELLANTS,

vs.

HENRY ELLERMAN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED OCTOBER 15, 1877.

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No. 306.

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1 UNITED STATES OF AMERICA:

Circuit court of the United States in and for the fifth judicial circuit and district of Louisiana.

HENRY ELLERMAN
vs.
NEW ORLEANS, MOBILE AND TEXAS RAILROAD Company. } No. 7594.

Transcript of record from superior district court, parish of Orleans.—Filed December 2d, 1875.

STATE OF LOUISIANA:

Superior district court of the parish of Orleans.

Petition.—Filed Sept'r 11th, 1875.

HENRY ELLERMAN
vs.
NEW ORLEANS, MOBILE AND TEXAS RAILroad Co. } No. 26705.

To the hon. the judge of the superior district court of the parish of Orleans.

The petition of Henry Ellerman, a citizen of New Orleans, against the New Orleans, Mobile and Texas Railroad Company, duly incorporated, and the city of New Orleans, respectfully represents:

That on or about the 29th day of June he entered into a con-
2 tract, passed before G. Le Gardeur, notary public, for a transfer to him of the revenues to be derived from the wharfage and levee dues of the wharves and levees of New Orleans. The said contract is hereunto annexed as part of this petition.

Petitioner alleges that the said contract was made and entered into by the city in conformity to ordinance No. 3148, resolution No. 3166, administration series, which are referred to as part of this petition.

Petition alleges that under charter of the city and under the laws of the State, the city had the full authority and right to make the said contract. That by the said contract, he was subrogated to all the rights and privileges of the city in relation to the collection and the receipt of the revenues to be derived from the said wharves and levees. That by said city ordinance, a certain amount of wharfage and levees dues was assessed against every vessel using the said wharves according to her size and capacity, to which sum the petitioner is entitled under the contract aforesaid. That under the said contract, the city was bound to warrant and defend the said right.

Now the petitioner alleges that the New Orleans, Mobile and
3 Texas Railroad Company have seized and taken possession of the wharves and levee for the space of three hundred and fifty feet below Calliope street and claim the right of collecting the wharfage and levee dues from vessels landing or mooring at the wharves and levee so seized upon and of collecting revenues from the said vessels, to be used for the private purposes of said company or in any manner the directors thereof may determine; and for the purpose of realizing a revenue there-

from claim the right to permit vessels there to land free of any charge for wharfage and levee dues assessed by the city.

Petitioner alleges that under this pretended claim, the said railroad company had actually granted permission to the New York, Havana & Mexican Steamship Line, composed of the following vessels trading with New Orleans, to wit: "City of Mexico," "City of Merida," and "City of Havana," also the New Orleans, Florida and Havana Line, to wit: The "Margaret," "Tappahanock," "Wilmington," and have contracted to receive from them the wharfage charged by the said company for their so doing. That the said vessels are in no manner connected with the business of the said railroad company, but are engaged in the
4 regular commerce between the ports of New York and New Orleans, in the same manner as other steamers or vessels are engaged in the same trade or in the trade with other ports. That the pretensions and the acts of said railroad company deprive the petitioner and the city of New Orleans of the revenue to be derived from the wharfage and levee dues assessed against said vessels, to which he is justly and legally entitled, greatly to the injury of the petitioner.

Petitioner alleges that the said railroad company base their pretensions above stated and their acts before mentioned upon a joint resolution of the legislature of Louisiana "In relation to the New Orleans, Mobile and Chattanooga Railroad Company, a corporation of the State of Alabama," approved March 6, 1869, being No. 67 of the acts of that year.

Petitioner denies that this resolution confers any such power or right upon the said railroad company. The grants by the said resolution were made to the said railroad company for public purposes, to wit, such as were essential to the company for the successful prosecution of the
5 legitimate business of said railroad company. That the company was chartered for the purpose of constructing and operating a railroad in such manner as railroads are usually conducted. That the said resolution was never intended to deprive the city of New Orleans of the revenues from the wharves and levees to which she was legally and equitably entitled, nor to confer upon the railroad company the right to raise a revenue at the expense of the city independent of the business of the railroad to be constructed as is claimed by the said railroad company. But if the construction of said resolution pretended to be given by the said railroad company be maintained as the proper one by the courts, then the petitioner alleges that the said resolution is in violation of both the constitution of the States and of the United States and is utterly null and void.

The petitioner alleges that prior to the act of 1805 incorporating the city, and by that act and by all the subsequent charters of the city and acts of the legislature relative thereto, the administrations of the wharves and levees was entrusted to the city. That connected with this administration was coupled a franchise, that the city might
6 charge and receive a reasonable remuneration for the expense of the facilities afforded to commerce. That under this franchise the city expended out of the revenues of the corporation very large sums on the wharves and levees, thereby greatly facilitating and benefitting the commerce of the country; in consequence of which she had a vested right in the franchise and the revenues legitimately derived from the expenditures for the benefit of commerce of which she could not be divested by the resolution above mentioned. That under the construction of the said resolution contended for by the railroad company, the State has undertaken to divest this vested right, to take from the city

wharves constructed by her, and the levee built, graded, and maintained by her, and to donate them to a private corporation for purposes in no manner connected with the business of the railroad company. That the said resolution so construed violates the amendment of the Constitution of the United States of 1868, art. 14, which provides that " nor
7 shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person, within its jurisdiction, the equal protection of its laws." The vested rights of the corporation of New Orleans in relation to property are the vested rights of all the inhabitants of the city.

The above mentioned construction of said resolution contended for by the said company, gives the company the power to lease or sell the said three hundred and fifty feet of the wharves and levee to whomsoever the company pleases, to use in such manner as the parties may cho'se. The company may now, or the transferees of the company may, devote the same to purposes entirely alien to commerce or levy contributions on commerce without restriction, or may even forbid the use of that space for commerce. In these respects, if the pretended construction be maintained, the resolution is violative of the acts of Congress of 1811 and of 1812, relative to the admission of Louisiana into the Union. These acts of Congress provide that the Mississippi River and the navigation thereof shall forever remain free.

The right to land and moor vessels to the shore of the river is
8 indispensible for the navigation of the same.

The petitioner further alleges that the State never had any proprietary rights in said space on the river bank which she could donate or bestow on any one. The rights attempted to be granted are rights of property in the space donated, which the State could not confer.

Wherefore, the premises being considered, the petitioner prays that the said railroad company and the city of New Orleans be duly cited to answer this petition; and that the annexed affidavit and bond being considered, that an injunction be issued against the said New Orleans, Mobile and Texas Railroad Company, prohibiting them from granting permission to any vessels or steamships to land or moor at the wharves or levees for the space of three hundred and fifty feet below Calliope street, except such vessels as are immediately connected with the business of said company in legitimately conducting and operating the railroad of the company, and further that the said company be prohibited from collecting or charging any wharfage or levee dues upon any vessels landing in said space. And that after all due proceedings
9 had, there be judgment in favour of the plaintiff, and that the said injunction be made perpetual and for costs and all other relief, &c., &c.,

(Signed) W. W. KING,
Att'y for Pet'r.

Affidavit annexed to petition.

Henry Ellerman, being duly sworn, states that the facts and allegations in the foregoing petition are true.

(Signed) HENRY ELLERMAN.

Sworn to and subscribed before me this 11 Sept., 1875.

(Signed) JOHN LE MONNIER,
3d Justice Peace, acting 2d J. P.

Order.

Let injunction issue as prayed for in the foregoing petition on plaintiff's giving bond in the sum of five thousand.

New Orleans, September 11, 1875.

(Signed) JACOB HAWKINS, *Judge.*

Bond.—Filed Sept. 11th, 1875.

HENRY ELLERMAN
vs.
N. ORL'S, MOBILE & TEXAS R. R. CO. } No. 26,705.

Know all men by these presents, that we, Henry Ellerman, as principal, and Charles A. Eager and James A. Lusk, as sureties, of the city of New Orleans, and State of Louisiana, are held and firmly bound unto the New Orleans, Mobile and Texas Railroad Company, their executors, administrators, heirs, and assigns, in the sum of five thousand dollars, lawful money of the United States of America, to be paid to the said railroad company, their executors, administrators, heirs, and assigns, for which payment, well and truly to be made to the railroad company, their executors, administrators, heirs, and assigns, we bind ourselves in solido, and each of us by himself, and each of executors, administrators, heirs, and assigns firmly by these presents, sealed with our seals and dated the eleventh day of September, 1875.

Whereas the said Henry Ellerman has this day presented a petition to the honorable the superior district court for the parish of Orleans, praying for a writ of injunction to issue against the said railroad company:

Now, the condition of the above obligation is that we, the above bound Henry Ellerman, principal, and said Eager and Lusk, sureties, will well and truly pay to the New Orleans, Mobile and Texas Railroad Company, the defendants in said injunction, all such damages as said railroad company may recover against us in case it should be decided that the said injunction was wrongfully obtained.

(Signed) HENRY ELLERMAN. [L. S.]
(Signed) C. A. EAGER. [L. S.]
(Signed) JAMES A. LUSK. [L. S.]

Signed, sealed and delivered in the presence of—
(Signed) WM. W. KING.

Contract, copy of.—Filed Sept. 11, 1875.

HENRY ELLERMAN
vs.
NEW ORLEANS, MOBILE AND TEXAS RAILROAD CO. } No. 26,705.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Be it known, that on this twenty-ninth day of the month of June, in the year of our Lord one thousand eight hundred and seventy-five, and the ninety-ninth of the Independence of the United States of America, before me, Gustave Le Gardeur, jr., a notary public in and for

the parish of Orleans, and official notary for the city of New Orleans, duly commissioned and qualified, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared the Honorable Charles J. Leeds, mayor of the city of New Orleans, and herein acting in such capacity of mayor under and by virtue of resolution number 3166, passed by the honorable the city council of New Orleans, approved on the 29th day of June, 1875; and also came and appeared Henry Ellerman, of this city, and the said mayor, Charles J. Leeds, declared, in his said capacity of mayor, and for and on behalf of the city of New Orleans, that by virtue of authority in him vested by said resolution number 3166, administration series, a certified copy of which is hereto annexed for reference, and in confirmation of the sale and adjudication made by the city council at its sitting of the 29th day of June, eighteen hundred and seventy-five, as will appear by reference to the said resolution No. 3166, A. S., annexed in the margin hereof for reference, the said mayor does, by these presents, grant, bargain, sell, and confirm unto the said Henry Ellerman, his heirs and assigns, for
13 the full term and space of four years and eleven months, to commence and be computed from the twenty-ninth day of June, 1875, the contract for building and repairing the wharves and levees according to the specifications on file in the office of administrator of commerce, and for the payment of debts contracting on account of them by transferring the revenues of the same for the said term and space of four years and eleven months, agreeably to the conditions, stipulations, and regulations of ordinance number 3121, administration series, as amended by resolution No. 3148, administration series, and hereinafter fully recited.

The said Henry Ellerman hereby binds himself, his heirs and assigns, to perform and execute said contract well and faithfully, and strictly in accordance with said specifications; to observe and comply with all the conditions and stipulations therein contained, and at all times to abide by himself and hold his heirs and assigns amenable and subject to the terms, penalties, and conditions of said specifications and of this contract, which said specifications are in the words and figures following, to wit:

14 Specifications for building and repairing the wharves and levees in accordance with ordinance No. 3121, A. S.

SECTION 1. That the repairs of the wharves required to be made under this ordinance shall consist in the repairing all holes in the flooring of the wharves and inclined planes immediately upon their first appearance; in raising all portions of the wharves which have sunk, or which may sink, below the levels now established; in taking out and renewing all caps and stringers, piles, fender piles, flooring, mooring posts, &c., which may be found rotten or decayed; in building anew all wharves which, from general decay, may require the same; and extending into the river all wharves which may require extension, so as to have at all times a depth of water of twenty feet at the water line of each and every wharf used for the landing and discharge of ships, and a depth of water of ten feet at the water line of each and every wharf used for the landing and discharge of steamboats.

SEC. 2. That in making the repairs required by section 12, ordi-
15 nance No. 3121, A. S., the piles used shall be of lake or river pine timber, as the city surveyor may direct, of the best quality, eleven

inches square at one end and nine inches square at the other end, and shall be driven from fifteen to twenty-five into the solid ground, at distances of ten feet from the centers. The heads of the piles shall be squared according to the levels to be given by the city surveyor, and shall receive and support eleven-inch square caps, which shall be strongly fastened at each intersection with a cap with rag bolts one inch square by sixteen inches long. The stringers shall be furnished out of the best quality of lake or river timber. The planks used for the flooring shall be of yellow pine of the best quality, free of sap, twelve inches wide, not less than three inches thick, and not less than fifteen feet long; they shall be strongly nailed to each of the stringers with seven-inch pressed spikes, two at each end of each plank and one at each intersection of the stringers.

SEC. 3. That each and every wharf used for the landing and discharge of steamboats shall have an incline plane projecting from the foot thereof at least thirty feet in width; that on the outside of said
16 inclined plane, and adjoining the last row of piles thereof, there shall be driven a row of piles which shall receive a cap eleven inches square, with nine inches tennons and mortices; and on the top of said cap shall rest a fender cap twelve inches square, which shall be fastened to the two other caps, at a distance of five feet, with screw bolts of one inch diameter and suitable length; and that each and any person who shall accept and take possession of said wharves in accordance with this ordinance shall and keep in good order and condition during the whole term of contract such inclined planes aforesaid as do now exist, connected with the wharves so accepted and taken possession of; and in case there shall be no inclined planes as above required at the time of accepting and taking possession of said wharf or wharves as aforesaid, then each and every person so accepting and taking possession of the same shall cause said inclined planes to be built at his or their expense, and shall keep the same in repair as aforesaid during the entire term of the contract.

SECT. 4. That each and every wharf used for landing and dis-
17 charge of ships a row of fender piles shall be driven, the piles to be ten feet apart, and fastened in such a manner as the city surveyor may direct, to the piles of the wharf, with at least two screw-bolts of one and a half inches in diameter; that on the front of said wharves two fender caps shall be placed, one on the level with the flooring of the wharf, and the other at five feet above low water mark; *shall* fenders shall be 12 inches square, to be fastened to the piles of the wharf with screw-bolts one and a half inches in diameter, and that any person who shall accept and take possession of said wharves in accordance with this ordinance shall repair and keep in good order and condition during the whole term of contract such fender piles and fender caps as do now exist, connecting with the wharf or wharves so accepted and taken possession of; and in case there shall be no fender-caps as above required at the time of accepting and taking possession of said wharf or wharves as aforesaid, then each and every person so accepting and taking possession of the same shall cause said fender piles and fender caps to be driven and placed as above required, at his or their
18 cost, and shall keep the same in repairs during the whole of said term of contract.

SEC. 5. That at each and every wharf used for the landing and discharge of steamships, fenders shall be driven at equal distance of twenty feet, and each fender shall be composed of four piles eleven inches square, strongly fastened together and to the wharves, with at least

six screw bolts of one and a half inches in diameter; that the four outside row of piles of each and every wharf used for the landing and discharge of steamships and of ships shall be braced every ten feet with ten by ten inch braces, which shall be fastened to each of said piles with screw bolts of inch in diameter; and that every person who shall accept and take possession of said wharves in accordance with this ordinance shall repair and keep in good order and condition, during the whole term of contract, such fenders and braces as do now exist, connected with the wharves so accepted and taking possession of; and in case there shall be no fenders or braces as above required at the time of accepting and taking possession of the same, shall cause said fenders to be driven and said braces to be made at his own cost, and shall keep the same in good repair during the whole term of contract.

SEC. 6. That all the wharves shall be accepted and taken possession of in accordance with this ordinance. Mooring piles twelve inches square shall be driven as follows, to wit: On the steamboat wharves, single piles along the inclined planes at distances of forty feet from the centers; on the steamship and ship wharves, double piles wheresoever as the city surveyor may direct. That each of the aforesaid mooring piles shall be strongly fastened as the city surveyor may direct to the piles of the wharves, with at least two screw bolts of one inch in diameter, and shall project three and a half feet above the flooring of the wharves; and that any person who shall accept and take possession of said wharves in accordance with this ordinance shall repair and keep in good order and condition during the whole term of the contract such mooring piles as do now exist, connected with the wharves so accepted and taken possession of; and in case there shall be no mooring piles as above required, at the time of accepting and taking possession of said wharves as aforesaid, then any person so accepting and taking possession of the same shall cause said mooring piles to be driven and fastened at his own cost, and shall keep the same in good repair during the whole term of contract.

T. S. HARDEE,
City Surveyor.

It is well understood that in case of failure by the contractor to begin or finish the work, or any part of the same, within the time fixed, the city council shall have the right to annul the contract, without putting the contractor in default, as required by article 1905 of the civil code, or any other law or laws and without applying to a court of justice to annul the same, and without indemnity; and it is also well understood that in case the contractor shall at any time abandon the work, or not finish and complete the same in conformity with his contract, the said contractor shall forfeit all claims he may have for any part of the work done by him up to the date of his abandonment, and that the city shall be thereby discharged and released from any and all liabilities therefor; and it is also well understood that in case the contract be resold, the contractor and his securities shall be held and bound in solido to pay unto the city all loss or difference between the price at which it may be adjudicated at a resale or readjudication.

It is also well understood that it is not in the power of the city council, or any other officer or department of the government of the city of New Orleans, to release the contractor from a strict compliance with this contract in all of its conditions and in all respects.

And in consideration of the foregoing, and the faithful compliance by

the said Henry Ellerman with the terms and stipulations of said specifications and of this contract, the said Mayor Leeds declared that he does, by these presents, for and in the name of the city of New Orleans, grant, bargain, confirm, transfer, assign, and abandon for the said term and space of four years and eleven months, to commence and be computed from the said twenty-ninth day of June, 1875, unto the said Henry Ellerman, accepting for himself, his heirs and assigns, the right and privilege of collecting and receiving the revenues of the said wharves and levees.

22 This transfer is made and accepted under the terms, conditions, stipulations, regulations and penalties of said ordinance No. 3121, administration series, as amended by said resolution No. 3148, administration series.

And the said Henry Ellerman hereby promises and binds and obligates himself to abide by, conform to, and comply with all and singular the conditions, clauses, terms, regulations and penalties of said ordinance No. 3121, administration series, as amended by said resolution No. 3148, administration series, which said ordinance No. 3121, amended as aforesaid, is in the words and figures following, to wit:

No. 3121, administration series, as amended by No. 3148, administration series.

MAYORALTY OF NEW ORLEANS,
City Hall, May 19th, 1875.

No. 3121, administration series, as amended by ordinance No. 3148, A. S., adopted by the city council June 15, 1875.

An ordinance to provide for building and repairing the wharves and levees, and for the payment of debts contracted on account of them, by transferring the revenues of the same for a limited time.

23 SEC. 1. Be it ordained, etc., that the administrator of commerce shall, after the enactment of this ordinance and after having given twenty days' notice in the official journal that he will receive at his office sealed proposals for their sale, shall adjudicate in accordance with stipulations herein contained the revenues of the wharves and levees of the city of New Orleans, collectible under existing ordinances upon all ships, vessels, steamships, steamboats, flat-boats and water craft of any and every description whatsoever upon the terms and conditions hereinafter set forth.

SEC. 2. The purchaser shall assume all the wharf liabilities of the city according to the ordinances relating thereto, and shall specially provide for interest on the outstanding wharf bonds when due, and shall further specially assume and liquidate the amount of said bonds, amounting to $682,000, in equal monthly installments, and as evidence of their compliance shall deliver to the department of finance the said bonds and coupons at the respective periods as above for cancellation.

24 Also, the further sum of $80,000, payable in sixty equal monthly installments, commencing to run from and after the eighth day of May, 1875, due by the city under compromise with the owners of various steamboats, made in conformity with ordinance No. 3100, administration series, promulgated in the official journal of the fourth day of May, 1875, provided that the whole indebtedness herein designated shall be liquidated within the term of the lease.

Also, the amount of $2,500 monthly, to cover expenses of police, lights and salaries of officers and employees of the city, engaged in connection with the wharves and levees.

SEC. 3. The time for receiving said proposals shall expire at the hour of twelve o'clock on the day of the sale, and the said administrator of commerce, in the presence of the mayor and the administrator of finance, or in case of the absence of the mayor, in the presence of two other administrators, shall proceed to open the sealed bids and ascertain the result of said proposals.

SEC. 4. The sale shall be awarded to the bidder who shall assume to pay and discharge the obligations and liabilities above set forth in
25 consideration of the transfer to him of the revenues of wharves and levees as above mentioned in the shortest time.

The city council reserves the right to reject the said bid, or any or all bids, and to readvertise and resell if deemed advisable.

The city council must either accept or reject within five days after the result of the bidding shall have been ascertained. If a bid accepted the mayor shall enter into a notarial contract with the bidder, according to the provisions of this ordinance. The said bidder, when notified by the city notary, shall appear before him to sign the act and complete the contract within three days after said notice.

SEC. 5. No bid shall be entertained unless the bidder at the time of presenting his sealed proposal shall deposit with the administrator of finance the sum of $40,000 in money or $80,000 in city bonds, under the condition that the same shall be forfeited to the city in case he neglects or refuses to comply with the terms and conditions of this ordinance when called on so to do, as is herein provided. The money or bonds so deposited will be returned when the notarial act shall have been signed and the bond or obligation executed as provided by section
26 nine of this ordinance.

SEC. 6. That the person to whom shall be transferred, as aforesaid, the revenues collectible for the wharves and levees shall be subrogated to all the rights and privileges of the city of New Orleans to sue for and collect said revenues.

SEC. 7. That the person to whom shall be transferred the revenues collectible as aforesaid, shall not sell, transfer, assign, set over, subrogate, or sublease his right, title, or interest in the same to any person whatever without the consent of the city council previously obtained, and any such sale, transfer, assignment, subrogation, or sublease, without the consent of the city council, shall subject the party so doing to the penalties prescribed by this ordinance for violation of its provisions, and will authorize the city council, if deemed advisable, to declare the contract forfeited, and hold the party and his sureties liable in damages and penalties for the violation of the contract.

SEC. 8. That by this ordinance and the contract specified, it is understood and agreed, the city only undertakes to transfer only such rights as she possesses, and the purchaser takes the said revenues
27 subject to all the rights now held by other persons by way of lease, privilege, contract, or by law, and the purchaser shall, in reference to them, be subrogated only to the rights of the city. Also, that the ferries and nuisance wharves now existing shall not be interrupted by the purchaser under this ordinance, and that the city reserves the right to increase the number and to change the location of said wharves.

SEC. 9. That the person to whom shall be transferred the revenues collectible, as aforesaid, shall give his obligation or bond, with good and

sufficient security, to be approved by the city council, for the sum of $250,000, conditioned for the true and faithful performance and fulfillment on the part of the transferree of all the duties and obligations imposed on him by this ordinance.

SEC. 10. That if the person to whom shall be transferred, as above mentioned, the revenues of the wharves and levees under this ordinance, shall fail to comply with any and all obligations assumed by him as to the punctual payments of the debts and obligations assumed by him, and the performance of the duties imposed on him, the city council shall the right to declare the contract at an end, and to sue the party and his sureties for all damages caused by his default, or to resell his rights after not less ten days' advertisement in the official newspaper, and hold the said defaulting party and his sureties liable for the difference in price, and for any other damages sustained.

SEC. 11. That the person to whom shall be transferred the revenues collectible as aforesaid, shall accept and take possession of the wharves, landing, and levees contained within the limits hereinafter specified; that said wharves, landings, and levees shall be accepted in the condition in which the same may be on the day the notarial act shall be accepted; and that said person so accepting and taking possession of said wharves, landings, and levees shall repair the same and keep the same in good order and condition during the whole term stipulated in the said notarial contract. It is understood and agreed that the repairs called for by this section shall be commenced within fifteen days after signing the notarial contract, and shall be continued until all are completed.

SEC. 12. That the levees named in this ordinance shall extend back to the line of the street or road, if there be such along the front of the river, and that the repairs of the levees required to be made under this ordinance shall consist in grading the same according to the grades already established, in covering the same with hard substances as above mentioned, such as rock, lake or oyster-shells, and gravel, in keeping the same always in good order by filling up all holes on their first appearance with hard substances as above mentioned, in filling up with river sand all parts of the same which may cave in or sink below the grades aforesaid, and in keeping the bulkheads on the outside of the same always in good order and condition; and whenever the batture shall form so as to require the levee to be extended, the transferree shall, on the order of the city council, fill up such parts of the batture and build such levees as said city council may deem necessary, as well as all new bulkheads, provided the transferree shall not be required to take charge of the levees except in the first, second, third, and fourth districts of this city, but the transferree shall not be entitled to receive any revenue from vessels landing in other districts until after the wharves shall have been built and the transferree shall have complied with the requirements of this ordinance in relation to them.

SEC. 13. That the transferree of the revenues of wharves and levees under this ordinance shall be bound to build all additional new wharves that may be necessary, provided he be not required to expend on such new wharves in any one year more than $25,000, and provided further that the present distribution of the wharves and levees as assigned for the landing of the different kinds of vessels shall not be changed during the term of transfer without the consent of the said transferree; provided further that this obligation in relation to building new wharves

shall only extend to the first, second, third, and fourth districts of the city. The term new wharves, as expressed in this section, shall be construed to mean new wharves where there are no wharves not existing, and shall not apply to the rebuilding of wharves to replace old ones.

If new wharves be required by the city council in the other
31 districts, at their own request or that of any person, the party so desiring the new wharves shall be bound to pay the transferree the expense of building said wharves twenty per cent. in advance, and the balance on completion of the wharf according to the rate of per square of one hundred superficial square feet which may be contained in the sealed proposals accepted. The transferree shall be bound to build said wharves, and the said party so desiring to have new wharves built shall receive the revenues derived from such wharves during the term of contract with said transferree, unless he be sooner reimbursed the amount expended. To give effect to this provision every bidder shall be required to state the price per square for which he will build new wharves in the said district, and the lowest price will be accepted by the council.

SEC. 14. That all works and repairs to be done under this ordinance shall be done under the supervision of the city surveyor and the administrators of commerce and improvements; and in case of refusal on the part of said transferree to make all said work and repairs, it shall be the duty of the city surveyor to have them made forthwith at the expense of said transferree.

32 SEC. 15. That all the works and repairs done under this ordinance shall be done by the parties bound to do the same after five days' notice thereof is given by the city surveyor and the administrators of commerce and improvements.

SEC. 16. That in case of the failure of the transferree to commence or finish the work within the time mentioned in the orders of the city surveyor and administrators of commerce and improvements, the city council shall have the right without further putting in default to order said works to be done under the supervision of the city surveyor and the administrators of commerce and improvements at the expense of the said transferree; and further to hold him and his sureties liable for all damages caused by said default.

SEC. 17. That the transferrees who shall accept and take possession of the aforesaid wharves in accordance with this ordinance shall be furnished by the city surveyor with an inventory of all spars, timber, stage-planks, etc., used for mooring vessels and for staging for vessels, and shall give to the city surveyor a receipt for the same, and
33 shall at all times keep on hand for the use of vessels a sufficient supply of the same, and shall return to the city at the expiration of his term of contract an inventory of equal amount and value of the same. It is understood and agreed that the spars, stage-planks, etc., required by this section are to be used only on the wharf proper.

SEC. 18. That the transferee who shall accept and take possession of the aforesaid wharves, landings, and levees in accordance with this ordinance, and the surety or sureties of such person, shall in solido be responsible for all damages which may be claimed of the city by any party or parties who may sustain injury or damage in consequence of the neglect of the aforesaid transferee to comply with the requirements of this ordinance.

SEC. 19. That all of the aforesaid wharves, landings, and levees shall continue subject to the police regulations now governing the same and under existing ordinances, and no change shall be made without the

consent of both parties; that all ships and other water craft shall pay the dues collectible under existing ordinances to the transferee of the revenues.

34 SEC. 20. That if, from overpowering force, the city shall not be able to protect the transferee in receiving the said revenues, or should they by any such cause be diminished over one-third, the transferee may, after satisfying all obligations that may have been incurred under the contract up to the time, surrender his contract and be discharged from any further responsibility.

SEC. 21. That the word "person" or "transferee," as used in this ordinance, shall be taken to embrace any firm, company, or corporation who may bid for the contract under this ordinance.

SEC. 22. That specifications for the building and repairing of wharves and levees shall be furnished by the city surveyor.

Adopted by the council of the city of New Orleans May 18, 1875.

YEAS.—Bertoli, Brown, Bouny, Laudry, McCarthy, Tilsbury.

NAYS.—Burke.

CHARLES J. LEEDS,
Mayor.

A true copy.

J. H. HARDY,
Secretary.

And the said Henry Ellerman hereby binds and obligates him-
35 self to build all new wharves that shall or may be necessary or required by virtue of said ordinance No. 3121, administration series, at the rate of ten dollars ($10) per square, and in conformity with the aforesaid specifications.

And the said mayor, Charles J. Leeds, declared that he does moreover by these presents subrogate the said Henry Ellerman to all the rights and privileges of the city of New Orleans to sue for and collect said revenues, but in nowise guarantees to the said Henry Ellerman the payment of the wharfage and levee dues, and the collection or payment thereof is to be enforced by the said Henry Ellerman for his own use and benefit and at his own cost and expense.

And now personally came and intervened herein John L. Gubernator, Henry H. Stanley, James A. Lusk, and Charles A. Eager, all of this city, who, having read what is above written, declared that they do hereby guarantee to the city of New Orleans the faithful performance of the foregoing contract or lease by the said Henry Ellerman, and his faithful compliance with the terms and conditions of said ordinance No.
36 3121, administration series, as amended by said resolution No. 3148, administration series; and said Henry Ellerman, as principal, and said Gubernator, Stanley, Lusk, and Eager, as sureties, hereby bind themselves and their heirs, jointly and in solido, in favor of the city of New Orleans in the sum of two hundred and fifty thousand dollars, lawful money of the United States, payable on demand to the mayor of New Orleans and to his successors in office.

Now, the condition of the above written bond or obligation is such that if the said Henry Ellerman shall well and truly and faithfully perform and execute the present contract or lease in accordance with the said ordinance No. 3121, administration series, amended as aforesaid, then the above written bond or obligation to be null and void; but otherwise to be and remain in full force and virtue.

The said Gubernator, Stanley, Lusk, and Eager hereby waive the benefit of division and discussion granted by law to sureties.

Thus done and passed, in my office at New Orleans, the day, month, and year first above written, in the presence of Armand Pitot, jr.,
37 and Ambrose G. La Pice, competent witnesses, domiciliated in this city, who have hereunto signed their names with the said parties and me, notary, after due reading of the foregoing.

(Original signed:)

J. L. GUBERNATOR.
HENRY ELLERMAN.
H. H. STANLEY.
JAMES A. LUSK.
C. A. EAGER.
CHARLES J. LEEDS,
Mayor.

A. PITOT, JR.
A. G. LA PICE.
G. LE GARDEUR, JR.,
Not. Pub.

A true copy of the original on file and of record in my office. One hundred and ten words erased, null; twelve words interlined, good; approved.

New Orleans, September 10, 1875.

[SEAL] (Signed) G. LE GARDEUR,
Not. Pub.

Writ of injunction.—Issued 11th Sept'r, 1875.

HENRY ELLERMAN
vs.
NEW ORLEANS, MOBILE AND TEXAS RAILROAD Company. } No. 26705.

THE STATE OF LOUISIANA:

Superior district court for the parish of Orleans.

State of Louisiana to the New Orleans, Mobile & Texas R. R. Co., greeting:

38 You are hereby commanded, enjoined, and restrained in the name of the State of Louisiana and of the superior district court for the parish of Orleans from granting permission to any vessels or steamships to land or moor at the wharf or levee for the space of three hundred and fifty feet below Calliope street, except such vessels as are immediately connected with the business of said company in legitimately conducting and operating the railroad of the company.

And you are further prohibited from collecting or charging any wharfage or levee dues upon any vessels landing in said space.

And you are so enjoined until the further order of this hon'l court.

Witness the honorable Jacob Hawkins, judge of the said court, the 11th day of Sept., in the year of our Lord 1875.

[SEAL.] (Signed) P. E. BURKE,
Deputy Clerk.

Sheriff's return to writ.

Received Sept. 11th, 1875; and on the same month and year I served a copy of the within writ of injunction on the N. O., Mobile and
39 Texas Rail R. Co., thro' E. Young, auditor, at the domicil of said co., on the levee foot of Girod st., N. O.; said Young informing me at the time of said service that the trustees and sup'r' of said company were all absent from the State, and that he was the only officer in charge of the affairs of said co. at present in this city.

Returned same day.

(Signed) S. W. SCOTT,
D'y Sh'ff.

Citation.—Issued Sept. 16th, 1875.

Superior district court for the parish of Orleans, in the city of New Orleans.

HERMAN ELLERMAN
vs.
NEW ORLEANS, M. & T. R. R. Co. } No. 26705.

STATE OF LOUISIANA:

City of New Orleans, thro' her proper officer, New Orleans, Louisiana:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the superior district court for the parish of Orleans within ten days after the service hereof.

Witness the honorable Jacob Hawkins, judge of the said court, this 16th day of Sept'r, in the year of our Lord 1875.

[SEAL.] (Signed) P. E. BURKE,
D'y Clerk.

40 *Sheriff's return to citation.*

Received Sept. 16th, 1875; and on the 17th day, same month and year, I served a copy of the within citation and accompanying petition on the city of New Orleans thro' Hon. Chas. J. Leeds, mayor, by leaving the same in mayor's office, city hall, in the hands of E. L. Bower, mayor's priv. sec., the mayor being absent at the time of said service.

Returned same day.

(Signed) S. W. SCOTT,
D'y Sh'ff.

Citation.—Issued 16th Sept., 1875.

HENRY ELLERMAN
vs.
NEW ORLEANS, M. & T. RAILROAD COMPANY. } No. 26705.

STATE OF LOUISIANA:

Superior district court for the parish of Orleans, in the city of New Orleans. New Orleans, M. & Texas Railroad Company, thro' its president.

You are hereby summoned to comply with demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the superior district
41 court for the parish of Orleans, within ten days after the service hereof.

Witness the honorable Jacob Hawkins, judge of the said court, this 16th day of Sept., in the year of our Lord 1875.

[SEAL.] (Signed) P. E. BURKE,
D'y Clerk.

Sheriff's return to citation.

Received Sept. 16th, 1875, and on the 17th day, same month and year, I served a copy of the within citation and accompanying petition on the N. O., M. & T. R. R. Co., thro' D. B. Robinson, gen'l sup. of said co., the trustees of said company being absent from the State at the time of said service.

Returned same day.

(Signed) S. W. SCOTT,
D'y Sh'ff.

Exception and answer.—Filed Sept. 24th, 1875.

HENRY ELLERMAN
vs.
NEW ORLEANS, M. & T. RAILROAD COMPANY. } No. 26705.

The exception of the New Orleans, Mobile & Texas R. Company to the petition and citation of the plaintiffs in the cause aforesaid.

42 This defendant, for exception to the petition aforesaid, says that the said defendant, at the date of the filing of the petition, and at the date of the lease granted to the plaintiff by the city of New Orleans, and at the date of the making of this exception, has not had, and has not now any control, occupation, management or power over the wharf property referred to in the petition, it being on the Mississippi River, in the city of New Orleans, and between Calliope street and Gerod streets, and referred to and described in the joint resolution of the general assembly of Louisiana, created 6th March, 1869, relative to the New Orleans, Mobile and Chattanooga Railroad Company, the name of the defendant at that State, and this defendant avers, that having had no control, occupation, management or power as aforesaid, this defendant has not in any manner interfered with or undertaken to interfere with, dispose of, or manage or occupy, or empower others to do the same, with any part of the property aforesaid.

Wherefore this suit ought not to be maintained against the said company, and the same ought to be dismissed, for which they pray
43 with their costs in this behalf expended.

And this defendant, for support of their said exception, for answer, says: That the New Orleans, Mobile and Chattanooga Railroad Company was incorporated in the State of Alabama in the year 1866, and has been recognized and permitted to exist corporate powers in

Louisiana, by the general assembly of that State; that under its powers on the first day of January, 1869, the said company executed a deed of trust in favor of Edward D. Morgan and Oakes Ames, as trustees, and conveyed to them all of the railroads of the said company, to them and their successors, with their real and personal property, rights, estates and interests, lying within the cities of Mobile and New Orleans, and within those cities, to secure the payment of a uniform series of four thousand bonds of that date, and for $1,000 each, with coupons of $40 each on each, for semi-annual interest, payable the 1st January and July of every year for forty years, and the debt to become due on the default in any payment of interest or principal, and with powers
44 to the trustees to possess and manage on default aforesaid.

The defendant further avers that a default occurred on the first day of July, 1874, and on the first day of January, 1875, and the default continues from those dates till the present time, no subsequent coupons having been paid.

The defendant further avers that James A. Rayner was appointed a trustee in the said deed after the death of Oakes Ames, in 1873; and the said Edwin D. Morgan and James A. Raynor, in January, A. D. 1875, entered upon and took possession of the railroads, estates, rights and interests, as conveyed, and have held possession and controlled the same, including the said wharf and all property contiguous to or connected with, since that date to the exclusion of this defendant. The defendant further avers that at the term of the circuit court of the United States which commenced in November, 1875, and was held in February, March and April, 1875, the said Morgan and Rayner as trustees, filed a bill in the said circuit court against the New Orleans, Mobile and Texas Railroad Company and other defendants claiming the property, to enforce the trusts and conditions of the said deed, and
45 under the orders of the said circuit court, the said Morgan and Raynor were made trustees and receivers of all of said property included in said deed, and confirmed in the possession of it, and were required to administer, manage and control the same under orders of that court, and to the entire exclusion of this defendant; whereby this defendant has not had the power, and has not in any manner exercised any control or possession; the said Edwin D. Morgan and James A. Raynor, who at present are in the State of New York, having had plenary power and control over the same.

Wherefore this defendant excepts to the petition and prayers for the dismissal of the same with costs to be paid by the plaintiff.

(Signed) J. A. CAMPBELL,
Att'y for Def't.

Answer of the City.—Filed Sept. 27th, 1875.

HENRY ELLERMAN
vs.
NEW ORLEANS, M. & T. R. R. Co. } No. 26705.

Now comes the City of New Orleans, herein cited as a defend-
46 ant, and admits the truth and adopts all the allegations of plaintiff's petition, except that respondent denies that she is bound to warrant and defend the plaintiff against the claim of the New Orleans, Mobile and Texas R. R. Co., should that claim be sustained as just and legal, and avers that the wharves were leased to plaintiff, subject to all rights and privileges which might exist in favor of individuals or

corporations under the laws and ordinances in force at the time of said lease.

Respondent avers that she has an interest in the maintenance of the injunction, and prays that it may be perpetuated, and for costs and general relief.

(Signed) B. F. JONAS,
City Att'y.

Supp'l petition.—Filed Oct. 26th, 1875.

HENRY ELLERMAN
vs.
N. O., MOBILE & TEXAS RAILROAD CO. } No. 26705.

To the honorable the judge of the superior district court for the parish of Orleans:

The supplemental petition of Henry Ellerman filed in this suit
47 of the Petition vs. New Orleans, Mobile and Texas Railroad Company respectfully shews, that the petitioner has reason apprehend and does apprehend and believe that George T. Norton, one of the harbor-masters for the port of New Orleans, and J. M. Witherspoon and A. K. Roberts, the last two being agents for vessels running to this port, *and* cause and direct vessels to be landed and moved at the wharves and levees for the space of three hundred and fifty feet below Calliope street for the purpose of enabling the said New Orleans, Mobile and Texas Railroad Company to collect the revenue from said vessels for the use of said wharves, in violation of petitioner's right as set forth in the original petition.

Wherefore petitioner, maintaining and approving all the allegations in said original petition the same as if incorporated herein, prays leave to file this supplemental and amended petition; that copy of the original petition and of this supplemental petition be served upon the said George L. Norton, harbor-master, and upon said J. M. Witherspoon and A. K. Roberts, and the said company, all of *them* reside in New
48 Orleans, and that they be cited to answer the demand therein contained; that after due process petitioner have judgment as prayed for in his original petition; that considering the bond and affidavit hereto annexed a writ of injunction issued, directed to said parties made defendants in this supplemental petition, and enjoining them and each of them in like manner and to the same extent as are the original defendants herein, from granting permission or causing any vessels or steamship to land or moor at the wharves or levees for the space of 350 feet below Calliope street, except such vessels as are immediately connected with the business of said company in legitimately conducting and operating the railroad of the company, and prohibiting and enjoining said George L. Norton, harbor-master, and said J. M. Witherspoon, and said A. K. Roberts from paying to said New Orleans, Mobile and Texas Railroad Company any dues required to be paid by such vessels and steamships landed or moored at said space of three hundred and fifty feet; that after due proceedings said injunction be made perpetual, and for general relief.

(Signed) WILLIAM W. KING,
" FRED. D. KING,
Of Counsel.

49 *Order.*

Let this supplimental petition be filed and a writ of injunction issue herein as prayed for upon petitioner furnishing bond, with good and solvent security, in the sum of five thousand dollars, conditioned as the law directs.

New Orleans, Oct. 26th, 1875.

(Signed) JACOB HAWKINS,
Judge.

Affidavit annexed to supp'l appeal.

Henry Ellerman, being duly sworn, deposes and says that all the facts and allegations contained in the original petition in this cause, and in the supplemental petition herewith filed, are true and correct.

(Signed) HENRY ELLERMAN.

Sworn to and subscribed before me the 25th day of October, 1875.

(Signed) WM. H. HOLMES,
Second Justice of the Peace, Parish of Orleans, La.

Bond.—Filed Oct. 26th, 1875.

HENRY ELLERMAN
vs.
NEW ORLEANS, MOBILE AND TEXAS R. R. Company. } No. 26705.

50 Bond for writs of attachment and sequestration.

Know all men by these presents, that we, Henry Ellerman as principal, and Charles A. Eager and James A. Lusk as sureties, of the city of New Orleans and State of Louisiana, are held and firmly bound unto the New Orleans, Mobile and Texas Railroad Company, George L. Norton, harbor-master, J. M. Witherspoon and I. K. Roberts, their executors, administrators, heirs, and assigns, in the sum of five thousand dollars, lawful money of the United States of America, for which, well and truly to be made to the parties last aforesaid mentioned, we bind ourselves in solido, and each of our executors, administrators, heirs, and assigns, firmly by these presents, sealed with our seals, and dated the 26th day of October, 1875.

Whereas the said Henry Ellerman has this day presented a supplemental petition to the honorable the superior district court for the parish of Orleans, praying a writ of injunction to issue against the said railroad company, George L. Norton, J. M. Witherspoon, and I. K. Roberts:

51 Now the condition of the above allegation is, that we, the above bound principal and sureties, will well and truly pay to the said clerk, or his successors in office, for the benefit of any and all persons interested in said suit, all such damage as may be recovered against us, in case it should be decided that the said writ was wrongfully obtained.

(Signed) HENRY ELLERMAN. [SEAL.]
(Signed) C. A. EDGER. [SEAL.]
(Signed) JAMES A. LUSK. [SEAL.]

Signed, sealed, and delivered in the presence of—

Writ of injunction.—Issued 26th Oct., 1875.

HENRY ELLERMAN
vs.
N. O., MOBILE & TEXAS RAILROAD COMPANY. } No. 26705.

THE STATE OF LOUISIANA:

Superior district court for the parish of Orleans.

State of Louisiana to George L. Norton and J. M. Witherspoon, greeting:

You are hereby commanded, enjoined, and restrained in the name of the State of Louisiana and of the superior district court of the parish of Orleans from granting permission or causing any vessels or steam-
52 boats to land or moor at the wharves or levee for the space of three hundred and fifty feet below Calliope street, except such vessels as are immediately connected with the business of the New Orleans, Mobile and Texas Railroad Company in legitimately conducting and operating the railroad of the said company, and you are prohibited and enjoined from paying to said New Orleans, Mobile and Texas Railroad Company any dues required to be paid by such vessels, or at said space of three hundred and fifty feet. And you are so enjoined until the further order of this honorable court.

Witness the honorable Jacob Hawkins, judge of the said court, the 26th day of October, in the year of our Lord 1875.

[SEAL.] (Signed) JNO. J. HANNON,
Deputy Clerk.

Sheriff's return to writ of injunction.

Received Oct. 26th, 1875, and on the same day, month, and year served a copy of the within writ of injunction on George L. Norton in person.

Returned same day.

53 (Signed) FRANK PFISTER.
D'y Sh'ff.

And on the 27th day of the same month and year I served a copy of the within writ of injunction on I. K. Roberts through his agent, E. Hernandez, in person, the said I. K. Roberts being absent from this State at the time of said service.

Returned same day.

(Signed) J. McCANTS,
D'y Sh'ff.

And on the 30th day of same month and year I served a copy of the within injunction on J. M. Witherspoon, one of the defendants herein in person.

Ret'd same day.

(Signed) J. McCANTS,
D'y Sh'ff.

Citation to supp'l petition.—Issued 29th October, 1875.

HENRY ELLERMAN
vs.
N. O., MOBILE & TEXAS RAILROAD COMPANY. } No. 26705.

STATE OF LOUISIANA:

Superior district court for the parish of Orleans, in the city of New Orleans.

Mr. GEORGE L. NORTON,
Harbor-Master, New Orleans, Louisiana:

54 You are hereby summoned to comply with the demand contained in the supplemental petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the superior district court for the parish of Orleans, within ten days after the service hereof.

Witness the honorable Jacob Hawkins, judge of the said court, this 29th day of October, in the year of our Lord 1875.

[SEAL.] (Signed) P. E. BURKE,
Dy Clerk.

Sheriff's return to citation supp'l pet'n.

Received Oct. 29th, 1875, and on the 2nd day of Nov'r, same year, served a copy of the within citation and accompanying supplemental petition on George L. Norton, one of the defendants herein, in person.

Ret. same day.

(Signed) FRANK PFISTER,
Dy Sh'ff.

Citation to supp'l petition.—Issued Oct. 29th, 1875.

HENRY ELLERMAN
vs.
N. O., MOBILE & TEXAS RAILROAD COMPANY. } No. 26705.

55 STATE OF LOUISIANA:

Superior district court for the parish of Orleans, in the city of New Orleans.

Mr. J. M. WITHERSPOON,
New Orleans, Louisiana:

You are hereby summoned to comply with the demand contained in the supplemental petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the superior district court for the parish of Orleans, within ten days after the service hereof.

Witness the honorable Jacob Hawkins, judge of the said court, this 29th day of October, in the year of our Lord 1875.

[SEAL.] (Signed) P. E. BURKE,
Dy Clerk.

Sheriff's return.

Received Oct. 29th, 1875, and on the 30th day of the same month and year I served a copy of the within citation and accompanying supplemental petition on J. M. Witherspoon in person.

Ret'd same day.

(Signed) J. McCANTS,
Dy Sh'ff.

56 *Citation to supp'l petition.—Issued 29th Oct.*, 1875.

HENRY ELLERMAN
vs.
N. O., MOBILE & TEXAS RAILROAD CO. } No. 26705.

STATE OF LOUISIANA:

Superior district court for the parish of Orleans, in the city of New Orleans.

Mr. I. K. ROBERTS,
New Orleans, Louisiana:

You are hereby summoned to comply with the demand contained in the supplemental petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the superior district court for the parish of Orleans, within ten days after the service hereof.

Witness the honorable Jacob Hawkins, judge of the said court, this 29th day of Oct., in the year of our Lord 1875.

[SEAL.] (Signed) P. E. BURKE,
D'y Clerk.

Sheriff's return.

Received Oct. 29th, 1875, and on the same day, month, and year I served a copy of the within citation and accompanying supple-
57 mental petition on I. K. Roberts through his agent, E. Hernandez, in person, the said I. K. Roberts being absent from this State at the time of said service.

Ret'd same day.
(Signed) J. MCCANTS,
D'y Sh'ff.

Citation to supp'l petition.—Issued 29th Oct., 1875.

HENRY ELLERMAN
vs.
N. O., MOBILE & TEXAS RAILROAD COMPANY. } No. 26705.

STATE OF LOUISIANA:

Superior district court for the parish of Orleans, in the city of New Orleans.

New Orleans, Mobile and Texas Railroad Company, thro' its proper officer:

You are hereby summoned to comply with the demand contained in the supplemental petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the superior district court for the parish of Orleans, within ten days after the service hereof.

Witness the honorable Jacob Hawkins, judge of the said court,
58 this 29th day of October, in the year of our Lord 1875.
[SEAL.] (Signed) P. E. BURKE,
Dy Clerk.

Sheriff's return.

Received Oct. 29th, 1875, and on the 30th day same month and year I served a copy of the within citation and accompanying petition on the N. O., M. & T. R. R. Co., thro' John J. Howell, treasurer of said company, at the domicil of said co. in New Orleans, the said railroad being in the hands of trustees, all of whom were absent from the State, and the gen'l sup't also being absent from the State at the time of said service.

Returned same day.
(Signed) S. W. SCOTT,
Dy Clerk.

Answer of Witherspoon, Roberts et al. and call in warranty.—Filed Nov. 3d, 1875.

HENRY ELLERMAN
vs.
NEW ORLEANS, MOBILE & TEXAS RAILROAD Co. } No. 26705.

John M. Witherspoon, A. K. Roberts, George L. Norton.

The answer of John M. Witherspoon, A. K. Roberts, defendants
59 in the suit pending in the said superior court for the parish aforesaid of the title aforesaid.

The said John M. Witherspoon and A. K. Roberts respectively answer to the petition of the said plaintiff, that they have no right or interest in the property situated in the city of New Orleans, bounded on the Mississippi River, and extending from Calliope street, of the said city, about three hundred and fifty feet to the lower line on the river, and running back to a street of this city between the river and Pilié street. The said parcel of land at the date of the petition of the said plaintiff and at the date specified in the petition of the making of his own contract for the levee, of whom of the city was possessed by Edwin D. Morgan and James A. Raynor, as owners thereof under a deed for the New Orleans, Mobile and Texas Railroad Company, formerly the New Orleans, Mobile and Chattanooga Railroad Company, and that they possess and hold the possession of said property under their deed and the orders of the circuit court of the United States for the district of Louisiana, made in a suit between the said parties and the said railroad company and others, in that court, at the term of said
60 court commencing the 1st Monday of November, 1874.

These defendants further answer that under a permission and license from the said Edwin D. Morgan and James A. Raynor, acting as trustees, with a title and under the orders of the circuit court aforesaid to receive certain steam vessels at the wharf of the said company, and to discharge cargo at the same, and only by the license aforesaid and the permission of said parties have they acted in the premises, and that the said Morgan and the said Raynor are bound to warrant and defend the license and permission they have given to these defendants.

Wherefore these defendants pray of your honor to discharge them from this cause after citation to the said Edwin D. Morgan and James A. Raynor to come into court and to assume the defence of the same.

And forasmuch as the said plaintiff well knew of the condition aforesaid and have needlessly mixed these respondents, they pray for their costs.

(Signed) JOHN A. CAMPBELL,
For Defendants.

Order.

61 Let this answer be filed and let citation issue to Edwin D. Morgan and James A. Raynor, persons called in warranty by these respondents.

New Orleans, November 3d, 1875.

(Signed) JACOB HAWKINS,
Judge.

Citation to answer & call in warranty.—Issued Nov'r 9th, 1875.

HENRY ELLERMAN
vs.
J. M. WITHERSPOON AND A. K. ROBERTS et al. } No. 26705.

STATE OF LOUISIANA:

Superior district court for the parish of Orleans, in the city of New Orleans.

Mr. EDWIN D. MORGAN,
New Orleans, Louisiana:

You are hereby summoned to comply with the demand contained in the answer and call of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the superior district court for the parish of Orleans within ten days after the service hereof.

Witness the honorable Jacob Hawkins, judge of the said court, this 9th day of Nov'r. in the year of our Lord 1875.

[SEAL.] (Signed) P. E. BURKE,
D'y Clerk.

62 *Sheriff's return.*

Received Nov. 9th, 1875, and on the eleventh day of same month and year I served a copy of within citation and accompanying petition on Jno. A. Campbell, esq., att'y for Ed. D. Morgan, who accepted service of same, the said Edwin D. Morgan residing permanently out of the State of Louisiana.

Ret'd same day.

(Signed) S. E. CROZAT, *D'y Sh'ff.*

Citation to answer & call in warranty.—Issued 9 Nov'r, 1875.

HENRY ELLERMAN
vs.
J. M. WITHERSPOON & A. K. ROBERTS ET AL. } No. 26705.

STATE OF LOUISIANA:

Superior district court for the parish of Orleans, in the city of New Orleans.

MR. JAS. A. RAYNOR,
New Orleans, Louisiana:

You are hereby summoned to comply with the demand contained in the ans. & call of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the superior
63 district court for the parish of Orleans within ten days after the service hereof.

Witness the honorable Jacob Hawkins, judge of the said court, this 9th day of November, in the year of our Lord 1875.

[SEAL.] (Signed) P. E. BURKE,
Dy Clerk.

Sheriff's return.

Received Nov'r 9th, 1875, and after diligent search and enquiring I was unable to find James Raynor, and was credibly informed that he resides out of the State of Louisiana, and on the same day, month, and year I served a copy of the within citation and accompanying petition on Jno. A. Campbell, his att'y, in person.

(Signed) S. E. CROZAT, *Dy Sh'ff.*

Answer of Morgan & Raynor, called in warranty.—Filed November 13th, 1875.

HENRY ELLERMAN
vs.
NEW ORLEANS, MOBILE AND T. R. R. CO. et al. } No. 26705.

THE STATE OF LOUISIANA:

Parish of Orleans, superior district court for the said parish.

64 The answer of Edwin D. Morgan and James A. Raynor, cited under a call of warranty, and who appear to said call and substituted themselves for the said Witherspoon and Roberts.

These defendants admit they are possessed of the parcel of land in the city of New Orleans and the wharf in front of the same, which lies on the Mississippi River below Calliope street, and extending from that street along the river bank about three hundred and fifty five feet, and running back from the river to Pilie street and new streets, and claim to control, use and enjoy the said land and the wharf, and that they have done so from before and since the first day of February, A. D. 1865, and that the said Witherspoon and Roberts have no interest in the suit and are subject to these respondents as mere licensees or tenants of theirs.

These defendants for further answer say that on the first day of January, 1869, the New Orleans, Mobile and Chattanooga Railroad Company, under the powers conferred upon them by legislative authority, conveyed their railroad franchises, real and personal prop-

erty and effects to the said Edwin D. Morgan and Oakes Ames, and successors, to secure an issue of construction bonds by the
65 said company to the number of four thousand, with coupons of interest thereon, each bond being for one thousand dollars, each coupon for forty dollars, payable semi-annually for the term of the bond, upon the condition that upon a default in the payment of principal and interest in the manner specified in the deed, that the said Morgan and Ames and their successors might enter upon the property and manage, administer, control, possess, and sell the same, and the franchises and rights and privileges of the said corporation, and these respondents aver that on the first day of January last there was a default, such as was described, and these defendants did enter upon the said railroad, franchises, rights and privileges, including the property and wharf first above described, and have possessed and used and controlled the same with the consent of said corporation, and under the said deed. They further aver that James A. Raynor is and has acted as successor of Oakes Ames, who died A. D. 1873.

And the said respondents further aver that the New Orleans,
66 Mobile, and Chattanooga Railroad Company, who made the said deed of mortgage, was the owner of the lands aforesaid under just titles, extending to the river, and including batture rights, and being so the owner the general assembly of the State of Louisiana, in a joint resolution approved 6th March, 1869, being the act No. 67 of the acts of 1869, granted to the said company authority and power to enclose and occupy the same for its purposes and uses as the corporation should deem expedient, and exempted from wharf and levee dues all vessels and steamships which should discharge or receive cargo at the same with their consent, whereby the said corporation was invested with the full control and power to enjoy the said property free *for* the servitude of the State and any claim of the said city of New Orleans. These respondents say that under the said deed, and to enforce the allegations of the company under the same, these respondents filed a bill in the circuit court of the United States for the district of Louisiana against the New Orleans, Mobile and Texas Railroad Company, the successors of the mortgag'or and other parties, and by order of the said cir-
67 cuit court of the United States, at the term which commenced the 1st Monday of November, 1874, in the said cause, these respondents were confirmed in the possession of all the railroad and immovable and personal property, and the franchises of the company, and were charged to manage, administer, improve, and repair the same, and to collect the rents, tolls, fares arising therefrom, and under this deed and these orders have held and now hold said property, and use and employ the same; they admit that they have allowed the vessels mentioned in the petition to lie at said wharf and to receive and to discharge cargo as they have a right to do under their titles and power aforesaid, and that the said plaintiff has no right, title, or claim upon the property as to derive the use of the same, nor has the city of New Orleans.

These defendants reconvene and claim two thousand dollars of damages for the illegal and vexatious suits and injunctions the said plaintiff has made in the premises.

These defendants deny all and singular the allegations of the petition not herein admitted, and pray judgment of the same, and that it
68 be dismissed at the cost of the said plaintiff.

(Signed) J. A. CAMPBELL,
Def't's Att'y.

Order annexed to answer and call.

Let this answer and call in warranty be filed as prayed for, and according to law.

New Orleans, Nov. 15, 1875.

Judge.

Continuance.—Extract from the minutes Nov. 15, '75.

HENRY ELLERMAN
vs.
NEW ORLEANS, MOBILE AND T. R. R. CO. et al. } No. 26705.

This case, assigned for this day, ordered to be continued by preference

Supplemental petition making E. D. Morgan and others parties.—Filed. Nov'r 19th, 1875.

HENRY ELLERMAN
vs.
NEW ORLEANS, MOBILE AND T. R. R. CO. et al. } No. 26705.

To the hon. the superior district court for the parish of Orleans:

69 In the matter of Henry Ellerman against the New Orleans, Mobile and Texas Railroad Company, No. 26705 of the docket, the plaintiff appears, and after due permission obtained files the following supplemental petition in which he alleges that the original petition was filed in the case according to the best information of plaintiff at the time. That defendants allege they have no interest whatever in the matter, but that they have long since sold and transferred all their interest in the property in controversy to Edwin D. Morgan and James A. Raynor as trustees for certain bondholders not named, and that said persons have also been appointed by the United States circuit court for this district receivers, with full powers to administer said property in controversy named in the said answer and in the original petition in this case.

The petitioner alleges that at the time he brought the original suit he had no knowledge of any such transfer of interest as is set up in the said answer, nor has he now any such knowledge except from the allegations of said answer.

Petitioner denies the said allegations and calls for oyer of the
70 alleged deed of trust, etc., proceedings in the circuit court of the United States, without which he cannot safely proceed in his case.

If it be true, as alleged by defendants, that they have transferred all their interests to Edwin D. Morgan and James A. Raynor, as trustees for some unnamed parties, that the title of said trustees is a prohibited fidei commissa, and is null and void. No such title as that alleged is known or tolerated by the laws of Louisiana.

Petitioner further denies that the said Edwin D. Morgan and J. A. Raynor as trustees acquired or could acquire from the alleged transfer to them by the New Orleans, Mobile and Texas Railroad Company, or by the orders of the United States circuit court appointing them receivers, any greater right or interest than was formerly possessed by said

railroad company. That said railroad company never had the right to permit persons to use the wharves and shores of the river described in the pleadings except for vessels in the immediate connection with said railroad company, and such as were useful and necessary for conducting their railroad business.

If the New Orleans, Mobile and Texas Railroad Company have
71 by any conveyance of theirs severed the property in controversy from the necessary connection of prosecuting their business as proprietors of the railroad, the said conveyance is null and void, because the grant on the part of the State of Louisiana was never made to said company for any such purpose.

Petitioner again alleges, as was alleged in his original petition, that neither the said railroad company, nor any person or persons deriving authority from them, can lease, hire, or charge wharfage against any person using said wharves on the property in controversy in competition, and to the exclusion of the right of the city of New Orleans to charge the wharfage allowed by law, nor to the exclusion of the rights of the plaintiff as lessee of the revenues of all the wharves of the city of New Orleans.

That the railroad company and the said defendants named in this petition have attempted, in violation of the rights of the city and of petitioner as lessee aforesaid, to permit certain persons in no manner connected with the necessary business of conducting the business of
72 said railroad company belonging to said company to land at the wharves of the said property in controversy, and to charge them for the use of said wharves, thus opening a rival wharf business in competition with the city of New Orleans, and the rights of your petitioners as lessee of the revenues of all the wharves within the limits of the city of New Orleans. This pretension on the part of said parties is in violation of law and cannot be sustained.

The petitioner further alleges that under the circumstances of this case as above set forth, that the said E. D. Morgan and J. A. Raynor and A. K. Robinson, who alleges he is their agent, are necessary parties to this suit. He therefore prays that they all be made parties, and that they be served with copies of this and the original petition, the allegations of which are all here reaffirmed and set up against the said parties, so far as they claim any right whatever under the laws of the State, or by virtue of any rights acquired either by transfer from the said railroad company, or from any orders of the United States circuit court; and that defendants be required to answer the same. Petitioner
73 further alleges that he does not seek to disturb any rights legally claimed by the defendants under the orders of said United States court; but that he cannot be deprived of his property or rights by an ex parte order of the said U. S. court, and avers that no order of said court was ever intended to confer upon said receivers any right of administration or control over the said property or wharfage derived therefrom than was previously, justly, and legally vested in the said railroad company. That there is nothing in said orders of the United States court that authorized the defendants to charge and receive wharfage from any vessel and especially such as were in no manner connected with the business of conducting the said railroad belonging to the company.

Petitioner further alleges that if it be true, that the said E. D. Morgan and J. A. Raynor and A. K. Roberts, their alleged agent, or the real parties in interest in this case, the same necessity exists for enjoining them from the illegal exercise of the rights claimed by them of

charging vessels wharfage or permitting them to land at the
74 wharves on the property in controversy which was originally alleged to exist against the said railroad company.

Wherefore petitioner prays the annexed bond and affidavit considered that the said E. D. Morgan and J. A. Raynor and A. K. Robinson be enjoined in the same manner as the said railroad company were heretofore enjoined from charging or receiving wharfage from vessels landing at wharves on the property in controversy and also from permitting vessels to land there unless necessarily connected with the business of conducting the railroad now or heretofore belonging to said railroad company, and for all other relief in the premises, &c., &c.

(Signed) WM. W. KING,
Att'y for Pet'r.

Affidavit.

Henry Ellerman, the plaintiff in the foregoing petition, being duly sworn, says the allegations and facts therein stated are true.

(Signed) HENRY ELLERMAN.

Sworn to and subscribed before me the 19th day of November, 1875.

(Signed) WM. H. HOLMES,
Second Justice of the Peace.

75 *Order.*

Let the foregoing supplemental petition be filed, and the parties therein named be made parties to this suit, the plaintiff having given bond for five thousand dollars, let the injunction as herein prayed for be granted and the said E. D. Morgan and C. A. Raynor and A. K. Robinson be enjoined as the New Orleans, Mobile and Texas Railroad Company were heretofore enjoined in this case, a copy of which injunction shall be served upon them; and further, that they be enjoined from permitting any vessel to land at the wharves on the property embraced in this suit unless said vessel be necessarily and immediately connected with the business of conducting the business of the railroad now or heretofore belonging to the New Orleans, Mobile and Texas Railroad Company.

New Orleans, Nov'r 19th, 1875.

(Signed) JACOB HAWKINS,
Judge.

Bond.—Filed Nov'r 19th, 1875.

76 HENRY ELLERMAN
vs.
NEW ORLEANS, MOBILE & TEXAS R'L R'D CO. et al. } No. 26705.

Know all men by these presents that we, Henry Ellerman, as principal, and James A. Lusk, as surety, of the city of New Orleans and State of Louisiana, are held and firmly bound unto E. D. Morgan, J. A. Raynor, and A. K. Robinson, their executors, administrators, heirs, and assigns, in the sum of five thousand dollars, lawful money of the United States of America, to be paid to the said E. D. Morgan, J. A. Raynor, and A. K. Robinson, executors, administrators, heirs, and assigns, for which

payment, well and truly to be made to the said E. D. Morgan, J. A. Raynor, A. K. Robinson, their executors, administrators, heirs, and assigns, we bind ourselves, in solido, and each of us by himself, and each of our executors, administrators, heirs, and assigns firmly by these presents. Sealed with our seals and dated the nineteenth day of November, 1875.

Whereas the said Ellerman has this day presented a petition
77 to the honorable the superior district court for the parish of Orleans, praying for a writ of injunction to issue—

Now the condition of the above obligation is that we, the above-bound Ellerman, principal, and J. A. Lusk, surety, will well and truly pay to the said E. D. Morgan, J. A. Raynor, and A. K. Robinson, the defendants in said , all such damages as they may recover against us should it be decided that the said injunction was wrongfully obtained.

(Signed) HENRY ELLERMAN. [L. S.]
(Signed) JAMES A. LUSK. [L. S.]

Signed, sealed, and delivered in the presence of—
(Signed) WM. W. KING.

Writ of injunction.—Issued November 19th, 1875.

HENRY ELLERMAN
vs.
NEW ORLEANS, MOBILE AND TEXAS R. R. CO. } No. 26705.

STATE OF LOUISIANA:

Superior district court for the parish of Orleans, State of Louisiana.

To A. K. Robinson, J. A. Raynor, E. D. Morgan, New Orleans, La., greeting:

78 You are hereby commanded, enjoined, and restrained in the name of the State of Louisiana and of the superior district court for the parish of Orleans, from charging or receiving wharfage from vessels landing at the wharves on the property in controversy and from permitting vessels to land there unless necessarily connected with the business of conducting the railroad now or heretofore belonging to the New Orleans, Mobile and Texas Railroad Company. And you are so enjoined until the further order o this honorable court.

Witness the Honorable Jacob Hawkins, judge of the said court, the 19th day November, in the year of our Lord, 1875.

[SEAL.] (Signed) JNO. J. HANNON,
Deputy Clerk.

Sheriff's return to writ.

Received Nov'r 19th, 1875, and on the 20th day, same month and year, I served a copy of the within injunction on the New Orleans, Mobile and Texas R. R. Company thro' J. A. Raynor, one of the trustees and managers of said Co., in person, and after due and diligent search and enquiry I was unable to find either E. D. Morgan, trustee, or A.
79 K. Robinson, supt., and was reliably informed that they were both absent from the State of Louisiana.

Returned same day.

(Signed) S. W. SCOTT,
D'y Sh'ff.

Petition to make a transfer to C. C. U. S.—Filed Nov'r 22d, 1875.

EDWIN D. MORGAN, JAS. A. RAYNOR, ET AL.
vs.
HENRY ELLERMAN. } No. 26705.

To the judge of the superior district court for the parish of Orleans:

The petition of Edwin D. Morgan and James A. Raynor and New Orleans, Mobile and Texas Railroad Company respectfully shows that there is pending in the said court a suit commenced by Henry Ellerman (No. 26705), a citizen of Louisiana, and a resident of New Orleans, against your petitioners wherein is involved a sum, as a matter of dispute, which exceeds five hundred dollars, and besides the costs. They also show to your honor that at the date of the commencement of
80 this suit and from that time your petitioners, Edwin D. Morgan and James A. Raynor, were and have been citizens of the State of New York, and that the defendants, the New Orleans, Mobile and Texas Railroad Company, was and is a corporation established and organized by the State of Alabama, and acts under its charter and franchises granted by it.

Your petitioners further state that the controversy between the plaintiff and this defendant can be fully determined without the presence of any other party to the suit. They severally pray for an order to remove the cause to the circuit court of the United States for the district of Louisiana, and tender with petition a suitable bond, under the act of Congress, approved 3d March, 1875, chapter 137.

(Signed) JOHN A. CAMPBELL,
For Petitioners.

Affidavit annexed to petition for removal, &c.

Before me, a justice of the peace for the parish of Orleans, came James A. Raynor, who maketh oath and saith that the matters of fact stated in this petition are true in substance and in fact.

81 (Signed) JAMES A. RAYNOR.

Sworn to and subscribed before me the 22d day of November, 1875.

(Signed) WM. H. HOLMES,
Second Justice of the Peace, Parish of Orleans.

Order.

Superior district court, parish of Orleans.

Petition having been made according to the act of Congress and bond given, let the suit be removed as prayed for, to the circuit court of the U. S. for the district of Louisiana.

New Orleans, November 22d, 1875.

(Signed) JACOB HAWKINS,
Judge.

Bond annexed to petition to remove.

THE STATE OF LOUISIANA,
Parish of Orleans:

Know all men by these presents, that we, Edwin D. Morgan, James

A. Raynor, and New Orleans, Mobile and Texas R. Co., *is* principal, and D. B. Robinson as surety, are held and firmly bound to Henry Ellerman in the sum of five hundred dollars, to be paid to him or his as-
82 signs, for which payment we bind ourselves, our heirs, and assigns, jointly and severally by these presents, dated this 22d day of November, 1875.

The condition of this obligation is such that whereas the principals aforesaid have made a joint & several petition for the removal of the suit No. 26705, wherein the said Ellerman is plaintiff and they are defendants (with others), in the superior district court of the parish of Orleans, to the circuit court of the United States for the district of Louisiana, under the terms of the act of Congress of 3d March, 1875.

Now, if the said defendants shall perform all of the allegations under the said act and file on the first day of its next session of the said circuit court a copy of the record in said suit, and shall pay all the costs that may be awarded against them by said circuit court in case it shall hold that the suit was wrongfully or improperly removed, and shall do whatever else the court may award in the premises, this obligation shall be void; else to have full force and effect.

(Signed) EDWIN D. MORGAN, [SEAL.]
By JAS. A. RAYNOR.
(Signed) JAMES A. RAYNOR. [SEAL.]
(Signed) NEW ORLEANS, MOBILE & TEXAS R. C., [SEAL.]
By J. A. CAMPBELL.
83 (Signed) D. B. ROBINSON, *Surety.*

Notice of removal of cause.—Issued Nov. 24, 1875.

HENRY ELLERMAN
vs.
N. O., M. & T. R. R. CO. ET AL. } No. 26705.

Notice.

THE STATE OF LOUISIANA:

Superior district court for the parish of Orleans.

NEW ORLEANS, *Nov. 24th*, 1875.

To HENRY ELLERMAN,
New Orleans, La.:

SIR: Please to take notice of the accompanying duly certified copy of petition, affidavit, and order for removal of above entitled cause to the U. S. circuit court, filed on the 22d November, 1875.

[SEAL.] (Signed) P. E. BURKE,
Deputy Clerk.

Sheriff's return to notice of removal.

Received on Nov'r 24, '75, and on the 25th day of same month and year I served a copy of the within notice of removal and accom-
84 panying petition on H'y Ellerman & Co., thro' H'y Ellerman in person.

Returned same day.

(Signed) S. W. SCOTT,
D'y Sh'ff.

Citation to suppl. petition.—Issued 24th Nov., 1875.

HENRY ELLERMAN
versus
N. O., M. & T. R. R. CO. ET AL. } No. 26705.

STATE OF LOUISIANA:

Superior district court for the parish of Orleans, in the city of New Orleans.

New Orleans, Mobile & Texas Railroad Co., thro' its president or representative, New Orleans, Louisiana:

You are hereby summoned to comply with the demand contained in the supplemental petition, of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the superior district court for the parish of Orleans, within ten days after the service hereof.

Witness the honorable Jacob Hawkins, judge of the said court, this 24th day of November, in the year of our Lord, 1875.

[SEAL.] (Signed) P. E. BURKE,
D'y Clerk.

85 *Sheriff's return to citation.*

Received Nov. 26, 1875, and on the same day, month, and year I served a copy citation and accompanying supp'l petition on the N. O., M. & T. R. R. Co., thro' J. A. Raynor, one of the trustees and manager of said R. R. Co. in person.

Returned same day.

(Signed) S. W. SCOTT,
D'y Sh'ff.

Citation to supp'l petition and original.—Issued Nov'r 24th, 1875.

HENRY ELLERMAN
versus
N. O., M. & T. R. R. CO. ET AL. } No 26705.

STATE OF LOUISIANA:

Superior district court for the parish of Orleans, in the city of New Orleans.

Mr. JAMES A. RAYNOR,
New Orleans, Louisiana:

You are hereby summoned to comply with the demand contained in the petition and supplemental petition of which a copy accompanies this citation or deliver your answer to the same in the office of the clerk of the superior district court for the parish of Orleans within ten days after the service thereof.

Witness the honorable Jacob Hawkins, judge of the said court,
86 this 24th day of November, in the year of our Lord 1875.

[SEAL.] (Signed) P. E. BURKE,
D'y Clerk.

Sheriff's return.

Received Nov. 26, 1875, and on the same day, month, and year I served a copy of the within citation and supp'l petition on James A. Raynor in person.

Returned same day.

(Signed) S. W. SCOTT,
D'y Sh'ff.

Citation.—Issued Nov. 24, 1875.

HENRY ELLERMAN
versus } No. 26705.
N. O., M. & T. R. R. CO. ET AL.

STATE OF LOUISIANA:

Superior district court for the parish of Orleans, in the city of New Orleans.

City of New Orleans thro' Chas J. Leeds, mayor, New Orleans, Louisiana.

You are hereby summoned to comply with the demand contained in supplemental petition of which a copy accompanies this citation
87 or deliver your answer to the same, in the office of the clerk of the superior court for the parish of New Orleans, within ten days after the service thereof.

Witness the honorable Jacob Hawkins, judge of the said court, this 24th day of November, in the year of our Lord 1875

[SEAL.] (Signed) P. E. BURKE,
D'y Clerk.

Sheriff's return.

Received Nov'r 26th, 1875, and on the same day, month, and year I served a copy of the within citation and accomp'n'g supp'l petition on the city of New Orleans, thro' the Hon. Chas. J. Leeds, mayor, in person.

Returned same day.

(Signed) S. W. SCOTT,
D'y Sh'ff.

Citation to petition & sup'l petition.—Issued 24th Nov., 1875.

HENRY ELLERMAN
versus } No. 26705.
N. O., M. & T. R. R. CO. ET AL.

STATE OF LOUISIANA:

Superior district court for the Parish of Orleans, in the city of New Orleans.

Mr. E. D. MORGAN,
New Orleans, Louisiana:

88 You are hereby summoned to comply with the demand contained in the petition and supplemental petition of which a copy accom-

panies this citation or deliver your answer to the same, in the office of the clerk of the superior district court for the parish of Orleans, within ten days after the service hereof.

Witness the honorable Jacob Hawkins, judge of the said court, this 24th day of November, in the year of our Lord 1875.

[SEAL.] (Signed) P. E. BURKE,
Dy Clerk.

Sheriff's return.

Received Nov'r 26, 1875, and after due and diligent search and enquiry I was unable to find E. D. Morgan, and was reliably informed that he resided permanently out of the State of Louisiana.

Returned Nov'r 26, 1875.

(Signed) S. W. SCOTT,
Dy Sh'ff.

Clerk's certificate.

STATE OF LOUISIANA:

Superior district court for the parish of Orleans.

I, John Burke, clerk of the superior district court for the par-
89 ish of Orleans, duly sworn and commissioned as such, do hereby certify that the foregoing ninety-six pages do contain a true and complete transcript of all the proceedings had and documents filed in the suit wherein Henry Ellerman is plaintiff and the New Orleans, Mobile and Texas Railroad Company et al. are defendants, numbered No. 26705 of the docket of the said court.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court, at the city of New Orleans, on the 1st day of December, in the year of our Lord one thousand eight hundred and seventy-five, and one hundredth year of the Independence of the United States of America.

[SEAL.] (Signed) JOHN BURKE, *Clerk.*

Judge's certificate.

I, Jacob Hawkins, sole judge of the superior district court for the parish of Orleans, do hereby certify that John Burke is the clerk of said court; that the same is a court of record, and that the signature of John Burk, clerk, to the foregoing certificate, is in the proper hand-
90 writing of him, the said John Burke; to his official acts as such full faith and credit are due and owing; and I do further certify that his attestation is in due form of law.

Given under my hand, at the city of New Orleans, on the first day of December, in the year of our Lord one thousand eight hundred and seventy-five.

(Signed) JACOB HAWKINS, *Judge.*

Clerk's certificate.

I, John Burke, clerk of the superior district court for the parish of Orleans, do hereby certify that Jacob Hawkins, whose genuine signature appears to the foregoing certificate, is now and was at the time of signing the same the sole judge of the superior district court for the

parish of Orleans, duly commissioned and qualified as such, and said attestation is in due form of law.

Witness my hand and the seal of our said court the 1st day of December, 1875.

[SEAL.] (Signed) JOHN BURKE,
Clerk Sup'r Dist. C't.

91 *Petition to set aside injunction.—Filed Dec'r 2d, 1875.*

No. 7594.

UNITED STATES OF AMERICA,
5th Judicial Circuit:

To the honorable the judges of the circuit court of the United States of said circuit and district of Louisiana:

Edwin D. Morgan and James A. Raynor, who are citizens of the State of New York, respectfully represent that they are defendants in a suit lately commenced by Henry Ellerman (who is a citizen of the State of Louisiana and resident of New Orleans) in the superior district for the parish of Orleans, State of Louisiana; that these petitioners made an application, together with their codefendant, the New Orleans, Mobile and Texas Railroad Company, a corporation of the State of Alabama, for the removal of the said cause to this honorable court, which application was granted by the said superior district court, and your petitioner has filed in this said court the transcript of the record of the said cause according to the terms and conditions of the act of Congress and of their bond filed in the said district court and in the said
92 cause; all of which will more fully appear by the said record.

Your petitioners further represent that the said Henry Ellerman sued out in the said district court a writ of injunction affecting your petitioners, and their tenants and agents, relative to the use of property in the possession of your petitioners, which is now pending and is in force in this court since the transfer of the cause.

Your petitioners respectfully shew that the said injunction was improvidently granted; that your petitioners, their agents and tenants, have been wrongfully restrained in the legal exercise of their rights of property and in the performance of duties imposed upon them by this honorable court, under which orders they hold said property.

Wherefore your petitioners pray that there issue to the said Henry Ellerman a notice that this cause is pending in this court, and that your petitioners will move the court on the 8th day of December, A. D. 1875, to set aside the said injunction, and to relieve your petitioners from the restraints imposed by the same; and that they be and appear in the said court to answer the said motion, to show cause to the con-
93 trary, if they have any.

(Signed) JOHN A. CAMPBELL,
Att'y for Petitioners.

DECEMBER 2D, 1875.

Marshal's return.

Received Dec. 2, 1875, by the U. S. marshal, and on the same day, month, and year served a copy hereof on Henry Ellerman, in person, in this city.

New Orleans, Dec. 2d, 1875.

(Signed) S. B. PACKARD,
U. S. Marshal,
By S. W. REED,
D'y Marshal.

Answer to petition to set aside inj'n.—Filed Dec'r 18th, 1875.

Circuit court of the United States for the fifth circuit and district of Louisiana.

HENRY ELLERMAN
vs.
NEW ORLEANS, MOBILE & TEXAS RAIL R. Co. et al. } No. 7594.

To the notice of the application made by defendants to set aside the injunction granted in this case the plaintiff excepts, and objects to the trial of the same upon the grounds as hereinafter set forth.

94 1st. The suit was originally brought in the superior district court of the parish of Orleans.

It has been illegally sought to be removed to this hon. court.

There is no valid or subsisting order of the said superior district court for the removal of said cause to this court.

The order of the said court to this effect was not final. Whilst the said order was still under the control of the court, it was suspended by an appeal to the supreme court of the State of Louisiana, as fully appears from the annexed documents A & B.

The operation of the order, then, stands precisely the same as if the order had never been granted. There cannot be legally two courts vested with jurisdiction at the same time of the same case. The case is, therefore, illegally before this hon. court.

2d. The case is prematurely brought before the court.

Under the law, the time for filing the record and order for removal of this cause to this hon. court was the 4th Monday of April next, the first day of the next term of the court succeeding the application for removal, the application for removal having been made and granted on or about the 22 of Nov'r last.

95 3. The bond given was upon the condition that applicants should file the record in the case in the said circuit court on the first day of the session of said court. This condition was not complied with. The bond was dated and filed Nov'r 22d, 1875. There was a session of said court on the 29th day of the same month. The record was not filed in this hon. court until the 2nd of December, 1875. This was too late, and the right to insist upon the jurisdiction of this court has been lost by the laches of the parties.

4th. The bond given is not in conformity with the law, and is therefore null and insufficient to authorize the removal of the cause to this hon. court.

The condition of the bond is that the applicants for removal should file the record of the case in this hon. court on the 1st day of its next session, instead of on the 4th Monday of April, 1876, which was the first day of the ensuing term of the court.

5th. The order of the superior district court was granted ex parte, and without notice to the plaintiff.

There were issues of fact which the plaintiff had the right to traverse and contest tendered by the allegations of the applicants in their

96 pleadings for removal. No such opportunity was allowed, and the order, therefore, was illegally granted.

6th. The order for removal was granted upon bare allegations of the citizenship of the parties, which the plaintiff alleges were not true; also

in a case in which the record shows this hon. court has not jurisdiction in the case.

The New Orleans, Mobile and Texas Railroad Company is a corporation authorized and created in Louisiana by the legislature of the said State, and was expressly compelled to have a legal domicil in said State.

Upon the foregoing grounds the plaintiff, Ellerman, objects to any further proceedings on the notice of the application to dissolve the injunction, and that the said motion be dismissed, and further, that the case be declared to have been illegally brought before this hon. court.

(Signed) WM. W. KING,
Of Counsel for Ellerman.

Document A, referred to in foregoing answer.—Filed Dec'r 18, 1875.

97 STATE OF LOUISIANA:

Superior district court for the parish of Orleans.

Continuance.—Extract from the minutes, November 29th, 1875.

HENRY ELLERMAN
vs.
NEW ORLEANS, MOBILE AND TEXAS RAILR'D Company. } No. 26705.

This case, assigned for this day, was ordered to be continued.

Motion of appeal.—Filed December 1st, 1875.

HENRY ELLERMAN
vs.
NEW ORLEANS, MOBILE AND TEXAS RAILROAD Company, and E. D. Morgan & other made parties. } No. 26705.

On motion of W. W. King and Henry C. Dibble, of counsel for Henry Ellerman, the plaintiff, and upon suggesting to the court that in the above suit a final judgment was rendered against him on the 22d of November, 1875, and signed on the 22d November, 1875, which will work to the said Ellerman irreparable injury, unles he can be re-
98 lieved therefrom by an appeal to the supreme court of the State,

It is ordered by the court that a suspensive appeal be allowed in the above case upon the said Ellerman giving an appeal bond with good and sufficient surety as the law directs, the sum of two hundred and fifty dollars, and that the said appeal be made returnable in the supreme court on the 3d Monday of December, 1875.

Appeal bond.—Filed Dec'r 1st, 1875.

HENRY ELLERMAN
vs.
NEW ORLEANS, MOBILE AND TEXAS RAILroad Company. } No. 26705.

Know all men by these presents, that we, Henry Ellerman as prin-

cipal and James A. Lusk as surety, are held and firmly bound unto John Burke, clerk of the superior district court, parish of Orleans, his successors, executors, administrators, and assigns, in the sum of two hundred and fifty dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated in the city of New Orleans on the 1st day
99 of December, in the year of our Lord one thousand eight hundred and seventy-five.

Whereas the above bounden Henry Ellerman has this day filed a motion for a suspensive appeal from a final judgment rendered against him in the suit of said Ellerman against New Orleans, Mobile and Texas Rail' Company, No. 26705, in the superior district court for the parish of Orleans, on the 22d day of November, 1875, and signed on the same day:

Now the condition of the above obligation is such, that the above bound Henry Ellerman shall prosecute his said suspensive appeal, and shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in the appeal; otherwise that the said James A. Lusk shall be liable in his place.

(Signed) HENRY ELLERMAN. [SEAL.]
(Signed) JAMES A. LUSK. [SEAL.]

Signed, sealed, and delivered in the presence of—
(Signed) WM. W. KING.

100 *Clerk's certificate.*

STATE OF LOUISIANA:

Superior district court for the parish of Orleans.

I, John Burke, clerk of the superior district court for the parish of Orleans, and as such duly commissioned and sworn, do hereby certify, that the foregoing five pages do contain true and correct copies of motion and bond of appeal and extract from the minutes (omitted from the copy of record now on file in the U. S. circuit court) in the suit in which Henry Ellerman is plaintiff and the New Orleans, Mobile & Texas R. R. Co. is defendant, numbered No. 26705, of the docket of the said court.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court, at the city of New Orleans, the 7th day of December, in the year of our Lord one thousand eight hundred & seventy-five, and the one hundredth year of the Independence of the United States.

[SEAL] (Signed) JOHN BURKE, *Clerk.*

Judge's certificate.

I, Jacob Hawkins, sole judge of the superior district court for
101 the parish of Orleans, do hereby certify that John Burke is the clerk of said court; that the same is a court of record, and that the signature John Burke, clerk, to the foregoing certificate is in the proper handwriting of him, the said John Burke, clerk; to his official acts as such full faith and credit are due and owing; and I do further certify that his attestation is in due form of law.

Given under my hand at the city of New Orleans on the 7th day of December, in the year of our Lord one thousand eight hundred and seventy-five.

(Signed) JACOB HAWKINS,
Judge.

Clerk's certificate.

I, John Burke, clerk of the superior district court for the parish of Orleans, do hereby certify that Jacob Hawkins, whose genuine signature appears to the foregoing certificate, is now and was at the time of signing the same the sole judge of the superior district court for the parish of Orleans, duly commissioned and qualified as such; that said attestation is in due form of law.

102 Witness my hand and the seal of our said court the 7th day of December, 1875.

[SEAL.] (Signed) JOHN BURKE,
Clerk.

Certificate clerk supreme court, marked B, referred in answer to petition to set aside injunction.—Filed Dec'r 18, 1875.

SUPREME COURT OF L'A,
Clerk's Office, New Orleans, Dec. 13th, 1875.

HENRY ELLERMAN
vs.
NEW ORLEANS, MOBILE AND TEXAS RAILroad Company & als. } No. 6031.

Appeal from the superior dist. court, parish of Orleans.

I hereby certify that the above entitled and numbered case has been filed in this office and is pending before this court.

In testimony whereof I have hereunto set my hand and affixed the seal of this court on this 13th day of Dec., A. D. 1875.

[SEAL.] (Signed) M. T. JULIAN,
D'y Clerk.

103 *Order injunction dissolved.—Extract from minutes of 29th January,* 1876.

HENRY ELLERMAN
vs.
NEW ORLEANS, MOBILE & TEXAS R. R. CO. } No. 7594.

This cause came on to be heard on defendant's motion to dissolve the injunction and was argued by counsel; on consideration whereof it is ordered by the court that said motion be overruled.

Agreement and Exhibit A annexed.—Filed May 8th, 1876.

HENRY ELLERMAN
vs.
JAMES A. RAYNOR & E. D. MORGAN & NEW ORleans, Mobile & Texas Railroad Co.

In the circuit court of the United States, 5th circuit, district of Louisiana, in an order of transfer from the superior district court of the parish of Orleans.

The parties above named being the only parties mentioned in the pe-

tition for the order on which and in behalf of whom the transfer
104 was made, come to the following agreement in order to facilitate the trial and avoid costs.

1st. It is admitted that when the transcript of the record from the superior district court was filed in the U. S. circuit court, the judge thereof directed the case to be entered on the chancery docket of the court, and he cause was thereafter proceeded with as one in chancery.

2d. It is admitted by the defendants that Ellerman was a lessee, as he has stated in his pleadings, and that his contract as such is properly described in the petition on file.

3d. It is admitted that the defendants legally represent the New Orleans, Mobile and Texas Railroad Company, the successors of the New Orleans, Mobile and Chattanooga Railroad Company, and that the property described in the joint resolution approved 6th of March, 1869, as set forth in the pleadings, is in their possession as stated in the answers filed by them under the said joint resolution.

4th. It is admitted that under the authority and license of these defendants, Witherspoon and others mentioned in the pleadings received vessels at the aforesaid wharf mentioned in the pleadings, and received and discharged cargo thereat without paying wharf or levee
105 dues to the city or lessee, and that the vessels so received and the cargo so landed or shipped did not belong to the defendants, and that the paper filed herewith as Exhibit A is the license under which said parties acted.

5th. It is further admitted that these persons paid to the defendants a sum of money for the privilege of using the wharf and landing-place aforesaid as compensation for the use of the same, as will appear from the contract annexed hereto.

6th. It is further admitted that the matter in controversy is above the sum of twenty thousand dollars in value.

We agree that these admissions may be regarded as facts in the cause to be considered in connection with the record in the case, and that the court may determine the questions of right as set forth in the pleadings of the parties, and that the case is submitted as upon bill, answers, and replication.

(Signed) J. A. CAMPBELL,
Def't's Att'y.

(Signed) WM. W. KING,
Att'y for Pl'ff.

Exhibit A referred to in foregoing agreement.

106 THE STATE OF LOUISIANA,
City of New Orleans:

These articles of agreement, concluded at New Orleans the tenth day of June, 1875, between Edwin D. Morgan and James A. Raynor, trustees, of the one part, and J. K. Roberts and John M. Witherspoon of the second part, witnesseth:

The parties of the first part, trustees under a mortgage and deed of trust executed by the New Orleans, Mobile and Chattanooga Railroad Company, January 1st, 1869, to Oakes Ames and Edwin D. Morgan and their successors, and holding possession of the property of said company in the city aforesaid, under said deed and an order of the circuit court of the United States for the district of Louisiana, by the authority of the same have granted to the said parties of the second part, respectively, the use and employment of so much of the wharf property of the

New Orleans, Mobile and Texas Railroad Company (the successor of the said New Orleans, Mobile and Chattanooga Railroad Company), on the Mississippi River, in the said city, as lies between the lower line or limit of the said property and a line distant therefrom on the river and in the direction towards Caliope street, of two hundred and fifty feet, and
107 extending back from the river to within twenty feet of the nearest railroad track of said company, the said wharf being the same which has been occupied and is held under the authority of a joint resolution of the general assembly of Louisiana, approved March 6th, 1869, and promulgated as No. 67 of the acts of 1869.

The use and enjoyment of the portion of the wharf aforesaid is granted for the term of twelve months, commencing the first day of July next, (1875), and the said parties are to pay the sum of seven thousand two hundred dollars for the term, as follows: On the last day of each month in the said term they are to pay three hundred dollars each to the parties of the first part, their successors and assigns.

The use and employment of the wharf aforesaid consists in the mooring of vessels coming to the consignment, custody, or care of the parties of the second part or to either of them, and the loading and unloading of cargoes upon all vessels of this kind with the full consent of the parties of the first part, exempt from wharf and levee dues, according to the terms of the said joint resolution.

108 Should there be any claim upon the parties of the second part by the city authorities of the city of New Orleans for wharf or levee dues, it is understood that the said parties of the second part shall resist the payment and defend the same by taking suitable measures for that purpose; that if bonds are required they shall furnish them. But the parties of the first part agree to maintain the exemption by their counsel in court, and in case of a defect agree to save the parties of the second part harmless, but only to the extent of restoring to the parties of the second part the sums they shall or may receive from them.

The liability of the parties of the first part shall under no conditions exceed the actual receipts of money from the parties of the second part.

And in case of a defeat as hereinbefore named, or in case of any claim upon the parties of the second part by the authorities of the city of New Orleans being sustained by judicial decision, then or at any time thereafter the parties of the first part shall have the right to terminate this agreement.

And the said parties mutually bind themselves to the performance of the terms of this contract, as witness their hands this the day of
109 the date above written, and which has been executed in triplicate.

(Signed) E. D. MORGAN,
(Signed) JAMES A. RAYNOR,
Trustees.

(Signed) J. K. ROBERTS.
(Signed) J. M. WITHERSPOON.

Memorandum June 10th, 1875.

The parties of the first part are to indemnify the parties of the second part from court costs and sheriffs' and other court charges, and to supply attorneys to the extent and within the limit of the amount of rent which shall have been paid by the parties of the second part, but not to exceed that sum.

The parties of the second part are to have the use without additional

charge for rent during the continuance of the lease of the small office and small store room in the building now being constructed by the parties of the first part, and situated on the wharf near the lower line of the same and between the river and the first railroad track.

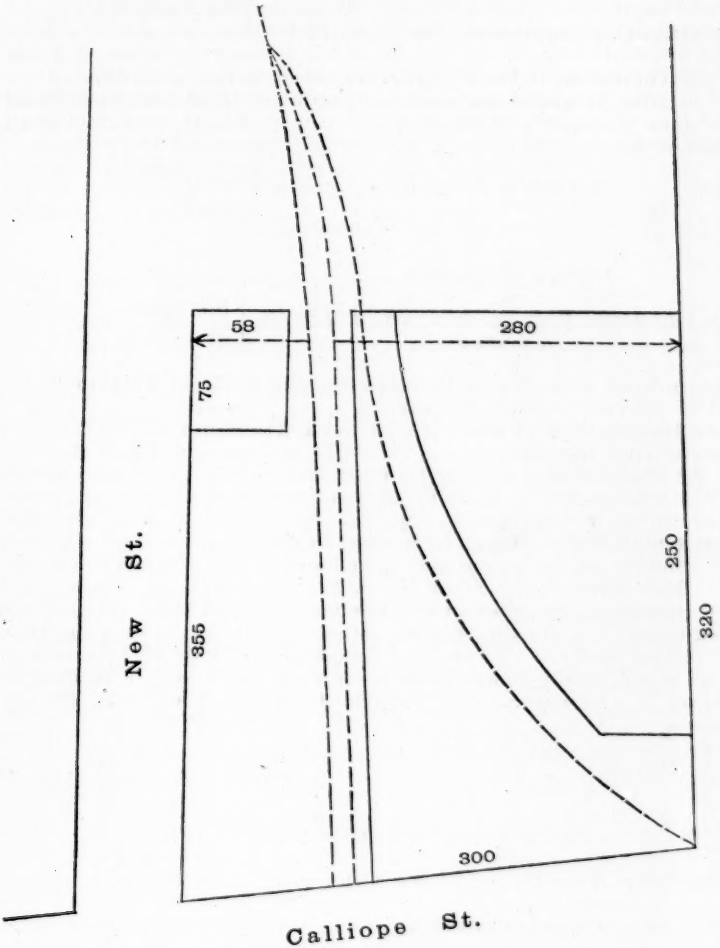
It is understood and agreed that the parties of the second part are each bound to the parties of the first part for the payment of one-half of the amount of the rent, and that demand is to be made upon each of the parties of the second part for the payment of their respective shares, and it is expressly understood and agreed that in case default shall be made in the payment of any of the amounts to become due at the end of each month by either of the parties of the second part then the parties of the first part shall have the right to cancel the lease by giving notice in writing thereof to each of the parties of the second part.

It is further understood and agreed that the only claims which the parties of the first part assume to indemnify or defend are claims of the authorities of the city of New Orleans which may be made for wharf or levee dues contrary to the terms of the joint resolution referred to in the lease.

(Signed) E. D. MORGAN,
(Signed) JAMES A. RAYNOR,
Trustees.

(Signed) J. K. ROBERTS.
(Signed) J. M. WITHERSPOON.

110 *bis.* *Diagram attached to Exhibit A. (License to Witherspoon & Roberts.)*



Order cause submitted.—Extract from minutes, May 18th, 1876.

HENRY ELLERMAN
vs.
NEW ORLEANS, MOBILE & TEXAS R. R. Co. } No. 7594.

111 On motion of W. W. King, of counsel for the plaintiff,
It is ordered that the case be submitted to the court for a final decision on the merits in pursuance of the agreement of counsel of all parties on file.

Judgment.—Entered and filed April 3d, 1877.

United States circuit court.

HENRY ELLERMAN
vs.
NEW ORLEANS, MOBILE AND TEXAS RAIL R. & others. } No. 7594.

It is ordered, adjudged, and decreed that the injunctions heretofore issued in this case be made perpetual.

And that the New Orleans, Mobile and Texas Railroad Company and its transferrees and assigns, and Edwin D. Morgan and James A. Raynor, the representatives of the rights of said railroad company, and J. M. Witherspoon and A. K. Roberts, either for themselves or as agents for others, be, and are hereby, enjoined and prohibited from granting permission to any vessels or steamships to land or moor at the wharves and levees for the space of three hundred and fifty feet below Cal-
112 liope street in the city of New Orleans, except such vessels as are immediately connected with the business of said railroad company in legitimately conducting and operating the railroad of the company; and further that the said railroad company be prohibited from collecting or charging any wharfage or levee dues upon vessels landing or mooring in said space below Calliope street, and that defendants pay all costs.

New Orleans, April 3d, 1877.
(Signed) W. B. WOODS,
U. S. Judge.

Writ of injunction.—Issued April 3d, 1877.

Circuit court of the United States, fifth circuit and district of Louisiana.

HENRY ELLERMAN
vs.
NEW ORLEANS, MOBILE & TEXAS R. R. Co. et al. } No. 7594.

The President of the United States to J. M. Witherspoon and A. K. Roberts, either for themselves or as agents for others, greeting:

Whereas it has been represented to us in our said circuit court
113 on the part of Henry Ellerman, by his bill of complaint lately exhibited against you and others touching certain matters and things therein set forth:

Now, therefore, in consideration of the premises and of the allegations

in said bill contained, you, the said J. M. Witherspoon and A. K. Roberts, your attorneys, and each of you, are hereby commanded and strictly enjoined, under the penalty of the law, that you absolutely refrain and desist perpetually from granting permission to any vessels or steamships to land or moor at the wharves and levees for the space of three hundred and fifty feet below Caliope street, in the city of New Orleans, except such vessels as are immediately connected with the business of the said R. R. Co. in legitimately conducting and operating the railroad company.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New Orlea s, this third day of April, in the year of our Lord 1877.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

Marshal's Return.

114 Received Apr. 4, 1877, by the U. S. marshal, and on same day, month, and year served a copy of within injunction on the within named in the following manner on A. K. Roberts, p'lly, on the 4th, and on J. M. Witherspoon, pl'ff, on the 5th.

New Orleans, April 6th, 1877.

(Signed) S. W. REED,
D'y U. S. Marshal.

115 UNITED STATES OF AMERICA,

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 114 pages, together with diagram on page 110 *bis* contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of Henry Ellerman vs. The New Orleans, Mobile, and Texas Railroad Company et al., No. 7594 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 9 day of July, A. D. 1877.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

Words & figures following: "together with diagram on page 110 bis" interlined & approved before signing.

I, Wm. B. Woods, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 9th day of July, A. D. 1877.

W. B. WOODS.

116 *Petition and order for appeal.—Filed October 11th, 1877.*

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

HENRY ELLERMAN
vs.
NEW ORLEANS, MOBILE AND TEXAS RAILROAD Company and others. } No. 7594.

To the honorable the judges of the Supreme Court of the United States:

The petition of the defendants in the cause pending in the circuit court of the United States for the district of Louisiana of the title above set forth, and upon which a final decree was rendered by the said circuit court on the 3rd day of April, 1876, at the regular term of the said circuit court, to the prejudice of the defendants in the said suit, sustaining the prayer of the plaintiff's bill and imposing the costs of the cause on the defendants.

Your petitioners state that the sum in controversy exceeds the sum of ten thousand dollars, and that the Supreme Court have juris-
117 diction. They respectfully pray an allowance of an appeal for the final decree aforesaid, and that a citation be signed to be served on the plaintiff; that the Supreme Court take cognizance of the cause on appeal and grant a decree to reverse the decree of the circuit court aforesaid, and to do justice to the defendants in the premises.

(Signed) JOHN A. CAMPBELL,
Sol. for Defendants.

The foregoing petition of appeal is allowed.
October 6th, 1877.
(Signed) JOSEPH P. BRADLEY,
Associate Justice of the Supreme Court U. S.

Bond for appeal.—Filed October 11th, 1877.

UNITED STATES OF AMERICA:

Know all men by these presents, that we, Edwin D. Morgan and James A. Raynor, as trustees, and New Orleans, Mobile and Texas Railroad Co., principals, and David F. Merritt, surety, are held and firmly bound, jointly and severally, unto Henry Ellerman in the sum of
118 five hundred dollars, lawful money of the United States of America, to be paid to the said Henry Ellerman, his heirs, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals and dated the 12th day of September, in the year of our Lord eighteen hundred and seventy-seven.

Whereas the said Edwin D. Morgan, James A. Raynor, and New Orleans, Mobile and Texas Railroad Company have applied to the honorable the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, in the suit of Henry Ellerman against said parties, for an order of appeal from a final decree in the said circuit court of the United States in chancery at the April term, 1877:

Now the condition of the above obligation is, that if the above bounden Morgan, Raynor, and said railroad company shall prosecute their appeal to effect, and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void, otherwise
119 to remain in full force and virtue.

(Signed) E. D. MORGAN, [L. S.]
(do.) JAMES A. RAYNOR, [L. S.]
Trustees N. O. & M. R. R.

(do.) D. F. MERRITT. [L. S.]

Approved:
(Signed) JOSEPH P. BRADLEY,
Associate Justice Sup. C't U. S.

SOUTHERN DISTRICT OF NEW YORK:

David F. Merritt, being duly sworn, says that he resides in New York; that he is worth the sum of one thousand dollars over and above all his just debts and liabilities.

(Signed) D. F. MERRITT.

Subscribed & sworn to before me this 12th day of September, 1877.
[SEAL.] (Signed) EDWARD L. OWEN,
U. S. Commissioner for the Southern Dist. of New York.

UNITED STATES OF AMERICA,
Southern District of New York:

On this 12th day of September, A. D. 1877, before me personally came Edwin D. Morgan and James A. Raynor and David F. Merritt, to me known, and known to me to be the individuals described in
120 and who executed the foregoing bond, personally acknowledged that they executed the same for the purpose therein mentioned.

(Signed) EDWIN L. OWEN,
U. S. Commissioner for the Southern District of New York.

CLERK'S OFFICE.

I certify the foregoing to be a true copy of the petition and order for appeal in the foregoing entitled and numbered cause.

Witness my hand and seal of said court, at the city of New Orleans, this 12th day of October, 1877.

F. B. VINOT,
Dy Clerk.

121 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to Henry Ellerman, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Henry Ellerman is appellee & plaintiff in the original suit, and New Orleans, Mobile & Texas Railroad Company, Edwin D. Morgan, James A. Raynor are appellants & de-

fendants, being No. 7594 of the chancery docket of the said circuit court, to show cause, if any there be, why the judgment rendered against the said appellants, as in said appeal mentioned *mentioned*, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this sixth day of October, in the year of our Lord one thousand eight hundred and seventy-seven.

JOSEPH P. BRADLEY,
Associate Justice of the Sup. C't U. S.

(Indorsed:) United States circuit court. No. 7594. Henry Ellerman vs. N. O., Mobile & Texas R. R. Co. et al. Citation.

Marshal's return.

Service accepted.
Oct. 12th, 1877.

WM. W. KING,
Att'y for Def't.

122 Supreme Court of the United States, October term, 1877.

NEW ORLEANS, MOBILE & TEXAS RAILROAD Company, E. D. Morgan & James A. Raynor, &c., appellants,
vs.
HENRY ELLERMAN.

The appellants come & pray that the decree be reversed & a decree be entered in favor of the said appellants, granting the prayer of their answer to the petition of the appellee. And they aver that upon a just construction of the act of the general assembly of Louisiana, dated 6 March, 1869, pleaded by them & their attorney, as set forth in the answer, they are authorized to use & employ the land specified in the manner they did, & that the decree of the circuit court prohibiting and enjoining them from such control & use of the property is erroneous, and the same should be annulled & set aside. & the appellants pray that there be a decree of restitution and that they may have a decree for all costs.

JOHN A. CAMPBELL,
Atto. & Sol'r for App'lts.

(Indorsement on cover:) No. 306. The New Orleans, Mobile and Texas Railroad Company et al., appellants, vs. Henry Ellerman. Louisiana C. C. U. S. Filed 15th October, 1877.

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OFFICE SUPREME COURT U. S.
FILED
MAR 15 1880
D. W. MIDDLETON, Clerk.

Supreme Court of the U. S.

October Term, 1879.

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EDWIN D. MORGAN, JAMES A. RAYNOR, NEW ORLEANS, MOBILE AND TEXAS RAILROAD COMPANY,

vs.

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Appeal from the Circuit Court of the United States, in Louisiana.

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Murphy & Co., Printers, Publishers, Booksellers & Stationers, Balt.

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vs.

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, IN LOUISIANA.

The New Orleans, Mobile and Texas Railroad Company was incorporated in Alabama, in November, 1866, by the name of New Orleans, Mobile and Chattanooga Railroad Company. The connection with Chattanooga having become impracticable, the name was afterwards changed. The railroad from the city of Mobile to New Orleans, provided for in the charter, was completed. In 1869, a construction mortgage was placed upon

this section, and the conveyance of the property, rights and franchises, was made to Oakes Ames and Edwin D. Morgan, as trustees; to the former of whom, Raynor is successor. These trustees were in possession, as trustees and receivers under the appointment of the Circuit Court in a foreclosure suit pending during the year 1875, and afterward.

Ellerman, the appellee, is the tenant of the city of New Orleans, of the wharves and levees within the city, under a farming contract contained in the record, and a subrogation of the rights of the city to collect wharfage and levee dues, on the property mentioned in the contract. (Record, p. 4, folios 12–37.)

This controversy concerns the use which the appellants made in 1875, of a wharf that belongs to the railroad corporation, within the limits of the city, and the appellee has obtained a decree to restrain and prohibit such use. (Record, p. 44.)

The title of the railroad corporation and of the trustees, is to be found in legislative acts of Alabama and Louisiana. In the XVth Article of the Alabama Charter, of 1866, this company was authorized "to obtain by purchase or grant from any person or corporation, and afterwards maintain, manage, use and enjoy any railroad, railroad property, and the appurtenances thereto, or any steamboats, piers, WHARVES and the appurtenances thereto, that the directors may deem necessary, profitable, and convenient for the corporation to own, use and manage in connection with its railroads."

Session Acts of Alabama, 1866, p. .

The Louisiana Act of the 16th Aug, 1868, "relative to the New Orleans, Mobile and Chattanooga Railroad Company," recognizes and approves that corporation as a body politic and corporate with all of the powers, privileges, rights and franchises granted to it by the State of Alabama, in the act of incorporation, adopting, confirming and approving all the provisions in the act as far as applicable to the State of Louisiana, and

invests it with the powers, privileges and franchises granted to it, and empowers it to exercise them in Louisiana.

Session Acts, 1868, No. 28, p. 28, sec. 1.

In February, 1869, in "An act to expedite the construction of the railroad," the legislature confers upon this corporation power to erect, construct, maintain, and use WHARVES, depots or other structures upon the margins, "*or upon that portion of the margins reserved to public use*" "of any and all navigable rivers, bayous or water courses in the State of Louisiana whenever the same may be deemed by a majority of the directors of the company necessary and requisite for the *legitimate and convenient transaction of its business.*"

Acts of 1869; No. 26, sec. 2.

On the 6th of March, 1869, the legislature of Louisiana passed the joint resolution relative to that railroad company which more particularly refers to the subject of this suit, and forms the ground of the appellant's defence against the complaint of the appellee.

Act of 1869, No. 67.

There was granted to this company "the right *to enclose and occupy for its purposes and uses in such manner as the directors may determine,* that portion of the levee, batture, and wharf in the city of New Orleans, between the street laid out, between Pilie street and the Mississipi river, and from Calliope street to the lower line of the batture rights *owned by the said company,* and no steamship or other vessel shall occupy, or lie at, said wharf, or receive or discharge cargo thereat, except by and with the consent of said company." The resolution proceeds, "And *all* steamships or vessels discharging or receiving cargo at said wharf *for said Company;* or *any* steamships or vessels *using said wharf* by, and *with the* consent of said company, and *not receiving*

or *discharging* cargo at, or *occupying any other wharf* in the city of New Orleans, *shall be exempt from the* PAYMENT OF ALL LEVEE AND WHARF DUES TO THE CITY OF NEW ORLEANS." "Said wharf shall be maintained and kept in repair by said company."

Morgan and Raynor, trustees and receivers, finding this property too large for their business in 1875 (a period of depression) made a contract with Witherspoon and Roberts, to allow them to occupy a portion of the wharf and adjacent ground for twelve months for a compensation of $7,200. This contract is dated 10th June, 1875, and is in the record; pp. 40–43.

On the 29th June, 1875, Ellerman signed his contract with the city of New Orleans and brought his suit in the Superior District Court of New Orleans in September, 1875, and obtained there a preliminary injunction against the execution of this contract by the appellants and their licensees, Witherspoon and Roberts. The cause was removed to the Circuit Court of the United States according to the Acts of Congress and was placed on the Chancery docket in that Court, by consent.

II.

PLEADINGS, EVIDENCE, AND DECREE.

The suit was commenced by Ellerman in the Superior District Court in New Orleans by petition.

He sets forth his contract with the city, wherein he agrees to occupy and keep in repair the wharves and levees of the city of New Orleans for a period of five years, less one month, from the 29th June, 1875.

He is to receive for his work, labor payments and attendance, all of the wharf and levee dues, arising under the regulations. He complains that the occupation and use of the wharf by Witherspoon and Roberts is contrary to his right under the city contract. He claims that the various legislative acts are

against law and constitution. The complaint was confined to the company when first filed. Several supplemental petitions were subsequently filed, and finally, all of the appellants became parties and answered. (Rec. 24, 25.) The order for removal to the Circuit Court of the United States is at p. 30. The case was submitted to that Court on the motion of the appellee (p. 44,) upon the pleadings and the evidence.

The evidence consists of a statement of facts by the attorneys. (Record, pp. 39–43.)

The admissions in effect establish the contract between Ellerman and the city; the contract between the appellants and their tenants or licensees; the relations of the appellants to each other and to the property described in the joint resolution and answers; and the value of the property involved to be $20,000. The Circuit Court perpetuated the injunction and determined the contract between the appellants and the licensees to be *ultra vires* and its execution was prohibited.

III.

ASSIGNMENTS OF ERROR.

The appellants assign for error in this final decree of the Circuit Court, the allowance of the injunction therein described and the requirement of the appellants to pay the costs of the suit; and for cause of error the appellants assign that the said decree deprives them of the use and enjoyment of the property specified in the decree in the manner and to the extent they are, and were, entitled to, by the constitution and laws of the State of Louisiana as set forth in their answers. And the appellants aver that the enjoyment, and use, and disposition, made by them in their contract with Witherspoon and Roberts was legal and proper and the parties should not have been disturbed.

2. That the said appellee had no such right, title, claim or interest in the subject of the suit as justified him to ask and obtain the

decree made by the Circuit Court in his favor in the said Court. Wherefore the appellants pray a reversal of the decree and that the petition be dismissed and the appellee decreed to pay the costs of the suit in this Court, and the Circuit Court of the United States in Louisiana.

POINTS AND AUTHORITIES.

I.

The first inquiry is, whether the plaintiff, Ellerman, has shown any cause of suit? His title is derived from a contract dated 29th June, 1875, between himself and the city of New Orleans. (Record, pp. 5–13.) The wharves and levees were adjudicated to him as the most satisfactory bidder, for a term of years. He was to build and to repair them according to specifications contained in the contract, and he received a grant and transfer of the right which the city had to all of the wharfage and levee dues during the term agreed upon. He was to take possession of the wharves, landings and levees in the condition they were in, and to keep them in good order during the period of his occupancy. (Record, folios 28, 29.) The city subrogates him to the rights and privileges of the city to sue for, and to recover the wharfage and levee dues. But the city provides that nothing but her own rights is transferred, and that Ellerman takes them subject to all of the rights then held by other persons by way of lease, privilege, contract, or by law, and that as to such he should have no rights but only those belonging to the city. (Record, folios 26, 27.)

The city of New Orleans, at the date of this contract was not possessed of the wharf or the levee between Calliope street and a line three hundred and fifty-five feet from it below, and on the Mississippi river and extending rearward to New street. It was at that date in the care and custody of the appellants under their titles of ownership to the dominion of the property—and

of the relinquishment of the servitude for public utility, the State had made in the joint resolution and other acts.

Nor was the city under obligation to maintain or to repair the wharf or the levee. Nor was the city authorized to collect any wharfage or levee dues from that property. The joint resolution authorizes the enclosure, and occupation by the company as the directors might direct, of the wharf and the levee. None can use it as a landing for vessels without the consent of the company. When used by vessels for the company, or with the consent of the company, either for moorage, or for receiving or discharging cargo, there was exemption from wharf or levee dues to the city of New Orleans.

The only claim the plaintiff derived from his contract with the city was to the wharves and levees that they owned and possessed. It is not competent to the plaintiff to assert a claim or right to what the city did not own nor possess, and was not able to deliver, and had not attempted to occupy, and was not bound to keep in order for use.

II.

The admitted case is that the appellants have the property under the conditions set forth in their answers and that they disposed of the same to Witherspoon and Roberts according to the contract contained in the record. (Record, pp. 40, 41, 42.)

The corporation in 1869 had acquired the space of ground described in the joint resolution from the owners of the fee.

In any other State than Louisiana the joint resolution would have been uncalled for. The owner of the bank, and with rights to batture, might have made wharves and charged vessels occupying and using them as incident to his riparian rights.

Banks vs. Ogden, 2 Wall., 58.

Dutton vs. Strong, 1 Black, 1.

Watkins vs. Holmon, 16 P., 54, 55.

In Louisiana, servitudes are imposed by law for public or common utility, and one of these affects the place which is to be left for the public use by the adjacent proprietors on the shores of navigable rivers, and for the making and repairing of levees, roads, and other public works.

Rev. Code, Arts. 445, 664, 665.

On the 6th March, 1869, this railroad corporation was the owner of the bank and batture rights between the New street and the Mississipi river below Calliope street in New Orleans. This corporation was the *adjacent proprietor that had left open a space for the public use* on the Mississipi river, within the meaning of the two articles of the civil code just cited. The grant in the statute "to expedite the construction of the railroad," passed in February, 1869, we have quoted, authorized the company to erect, construct, maintain, and use upon that portion of the margins reserved to public use of any and all navigable rivers, bayous and water courses in the State.

Session Acts, 1869, No. 26, sec. xv.

But the Company obtained a more specific grant, applicable to this particular parcel of land in the joint resolution pleaded in the answers. Session Acts, No. 67, 1869. This resolution is in substance and effect a renunciation of the servitude on that space of riparian property.

III.

The legislative control over this servitude is fully established in the code and statutes of Louisiana and in the judgments of the Supreme Court of the State.

It is a public right—a right for the common utility and controlled by the sovereign authority.

C. C., 453, 455, 458.

De Armas vs. Mayor, 5 La. R., 132; 11 Ann., 148; 13 La. R., 326; 18 La. R., 122.

Municipality vs. Kennedy, 10 Ann., 54.
Gould vs. Hudson R. Co., 6 N. Y. Rep., 523.
People vs. Vanderbilt, 26 N. Y. Rep., 287.

The legislative control exercised over this particular servitude has been affirmed by the Supreme Court of the State in a case between the city of New Orleans and the appellant, the N. O., M. & T. Railroad Company.

New Orleans vs. New Orleans, Mobile & C. R. R. Co., 27 Ann., 415.

A similar servitude existed at the commencement of this 19th century upon the navigable water courses from the mouth of the St. Mary's river, in Georgia, along the Florida coast, on the Atlantic and Gulf of Mexico, and thence to the Rio Grande, on the western border of the United States, under the rule of the Spanish law and dominion.

No such servitude now exists, except in Louisiana. It has been renounced—renounced at the time of the adoption of the common law by legislation. The same change has been made on the Pacific coast.

The authority of the legislature to dispose of it, is unquestionable.

IV.

The case of New Orleans vs. New Orleans, Mobile & Chattanooga Railroad Co., 27 Ann., 415, above cited, arose upon a claim made by the city upon the company for wharfage and levee dues, on account of vessels employed by the company to bring railroad supplies and materials for the construction of the wharves, depots, and railroad in that vicinity, and which vessels used that wharf and that levee. The corporation answered the simple matters of fact, and relied on the precise exemption of vessels, "*discharging and receiving cargo at said wharf for said*

company," as the simplest defence to be made. The city insisted that the joint resolution was unconstitutional, beyond the legislative power and contrary to public right, &c., &c., &c. The Court answered these objections that the disposition of this servitude belonged to the legislature as repeatedly determined, and a railroad corporation was created for public objects, and the case showed that the uses were legitimate and proper.

This opinion was before the Circuit Court when this cause was determined, and is cited as the basis of the decree made. The Judge in that Court supposed the Supreme Court had defined the precise limit within which the property could be used by the railroad company, and that all other use was excluded without any reference to the facts of that case. Ellerman vs. N. O., M. & C. Railroad Co., 2 Woods' C. C., 120. The facts of the first case raised the question whether the grant of the right to receive vessels in the employ of the company with an exemption for levee dues, was valid.

The Court answered, unquestionably. This servitude is under the control of the legislature.

The case before this Court is whether another clause is operative. Besides the one so considered by the Supreme Court, there is still another exemption in the resolution.

"*Any steamships or vessels using said wharf by and with the consent of said company, and not receiving cargo at, or occupying any other wharf in the city of New Orleans, shall be exempt from the payment of all levee and wharf dues to the city of New Orleans.*" The admitted facts are that the vessels using the wharf in 1875, were licensed to do so by the railroad corporation, and that the corporation received a pecuniary benefit. The learned Judge does not deal with these facts. The Supreme Court of the State had a different case to decide under another clause of the resolution. A case where the vessels come to the wharf with the consent and in the immediate employment of the company. The Supreme Court makes a perfectly satisfactory judgment,

and a close and pertinent expression of opinion on that case. The error of the Circuit Court is in deciding that every case must be correspondent with that one, and if not, the corporation or its managers must of necessity, have exceeded their authority in the employment of the property.

V.

The case before this Court shows that in 1875, the railroad company was embarrassed with a large debt. The trustees entered upon the property and filed a bill to enforce the deed of trust in the Circuit Court of the United States, for the benefit of the creditors of the company, and of those interested in it. These trustees were appointed receivers, and as trustees and receivers, found a large and commodious property upon which much money had been expended, and which, at that date, exceeded the present wants of the current business of the company.

They granted a license to parties to use this property for the term of one year for $7,200, in the manner in which the company had been accustomed to use it in a period more prosperous. This is what the Court decides to be *ultra vires*, and prohibits the company "from granting permission to any vessels or steamships to land or moor at the wharves and levees," specified in the proceedings, "except such vessels as are immediately connected with business of said railroad company, in legitimately conducting and operating the railroad of the company." The particular contract with Witherspoon & Roberts, is condemned, and all charges for wharfage or levee dues of any sort are restrained by the decree, We are somewhat at a loss to find the grounds for a decree so sweeping.

Adjudged cases determine a corporation may employ or dispose of property for uses and purposes within the range of its general business, or where the use is not alien to its business, and no competitor or rival in such business has any cause of

complaint. The wharf and landing place belonged to a corporation engaged in the construction of railroads east and west of the river, and in the transportation of commodities suitable for exportation. Why may not a vessel coming there for cargo, pay wharfage and levee rates to the corporation?

The vessel uses property of the corporation and obtains a benefit, and this is the basis of a claim for wharfage.

Brown vs. Winnisomett. 11 Allen, Mass. R., 326.
Sampson vs. Westminster H. Co., 8 H. L., 712.
Forrest vs. Manchester R. Co., 30 Beav., 40.
Greene Ultra Vires, 66.

VI.

The case of the appellants rests upon matters of fact and ascertained rules of law, that cannot be misconstrued without hard labor. The railway company in 1869, owned this riparian property in New Orleans, subject to the servitude declared and defined in the Civil Code. as follows:

"The use of the banks of navigable streams is *public*; accordingly every one has a right freely to bring his vessels to land there; to make fast the same to the trees which are there planted; to unload his vessels; to deposit his goods, dry his nets and the like."

Nevertheless the *ownership* of the river banks belongs to those who possess the adjacent lands. (C. C., 445.)

This servitude is subject to the legislative control.

New Orleans vs. N. M. C. R. Co., 27 Ann., 415.

A servitude is extinguished by an express or tacit renunciation or remission by him to whom the servitude is due. (C. C., Arts. 783, 813.) A remission will be inferred when the owner of the estate to whom it is due—the *dominus*—permits the owner of the servient estate, to build such works or perform such acts, as presuppose the annihilation of the right, because they prevent or preclude the exercise of that right (C. C., 819.)

The grants of the legislature to the railroad company are precisely of this nature and operation. The legislature *grants the right* to the company, to enclose and to occupy this property for its purposes and uses as the managers of the company may deem suitable. This annihilates any adverse claim to use the property as the article of the Code had asserted. But the resolution of the legislature withholds the privilege of any steamship or vessel to moor alongside the wharf without the consent of the company, or to receive or discharge cargo at the wharf. This is not all. Having in mind that a large jurisdiction and control of the levees and wharves had been granted to the corporate authorities of New Orleans with profits to arise from wharfage rates and levee dues, the legislature denies to the corporation all right to either, in case of any vessel or steamship engaged for the company or having the consent of the company to use or occupy the wharf. The legislature is careful to relieve the city from the responsibility and expense of maintaining the wharf in repair. No slight responsibility, as the opinion and judgment of this Court has established.

N. M. C. Railroad Co., vs. Hanning, 15 Wall., 649.

It must be noted that in 1869, this *batture* property was, as the word implies, a deposit of sediment in the bed of the river which ordinarily was covered with water and had not attained the consistency of a mud flat. The projected street near it was without a name.

The improvements of the Company have made it habitable and entitle them to derive compensation from its use.

Thos L Dupre

JOHN A. CAMPBELL,
Sol'r for Appellants.

APPENDIX.

AN ACT

RELATIVE TO "THE NEW ORLEANS, MOBILE AND CHATTANOOGA RAILROAD COMPANY," A CORPORATION OF THE STATE OF ALABAMA, AND AUTHORIZING AND EMPOWERING SAID COMPANY TO EXERCISE AND ENJOY ITS CORPORATE POWERS AND FRANCHISES, IN THE STATE OF LOUISIANA.

APPROVED *16th August, 1868.*

SECTION I. *Be it enacted by the Senate and House of Representatives of the State of Lousiana, in General Asssembly convened,* That the New Orleans, Mobile and Chattanooga Railroad Company, a corporation, incorporated, organized and existing under and by virtue of its Act of incorporation, duly enacted by the Legislature of the State of Alabama, entitled, "An Act to Incorporate the New Orleans, Mobile and Chattanooga Railroad Company," Approved November 24th, 1866, and amended by an act approved February 12th, 1867, is hereby recognized and approved as a body politic and corporate, with all the powers, privileges, rights and franchises granted to it by State of Alabama, in and by said Act of incorporation, hereby adopting, confirming and approving all the provisions of said Act of incorporation, granted to said Company, so far as the same may be applicable to this State, and may be adopted, approved and confirmed thereby. The said Company is hereby invested with the powers, privileges and franchises granted to it, in its said Act of incorporation, and is empowered and authorized to exercise and enjoy the same in the State of Louisiana, and to have, exercise and enjoy all the rights, powers, privileges and franchises pertaining to corporate bodies within the said State of

Louisiana, necessary for the full enjoyment and exercise of the said rights, powers, privileges and franchises granted and secured to it by its said Act of incorporation, and necessary to secure, attain and accomplish the objects and purposes of its incorporation in the same manner, and with the like power and effect as if said Company had been incorporated by virtue of any grant or law of this State, subject only to the conditions, provisions and restrictions of this Act, as hereinafter set forth.

SECTION II., SUBSECTION 4.

Fourth. To construct, establish or purchase, in the State of Louisiana, and thereafter to own, maintain and use, suitable wharves, piers, warehouses, steamboats, harbors, depots, stations and other works and appurtenances connected with, and incidental to, said railroad and the business of said Company, and by the directors of said Company deemed necessary and expedient for said Company to own and manage.

SECTION XV OF ACT NO. 26 OF SESSION OF 1869.

SECTION XV. *Be it further enacted, etc.*, That the said Company, with the consent of the owners of lands fronting on any navigable water course, or after such lands have been acquired by the Company by purchase, release, donation or in any other manner, in accordance with the laws of the State of Louisiana, may erect, construct, and thereafter maintain and use wharves, warehouses, depots or other buildings and structures in and upon the margins, or upon that portion of the margins reserved to public use, of any and all navigable rivers, bayous or water courses in the State of Louisiana, wherever the same may be deemed by a majority of the directors of the Company necessary and requisite for the legitimate and convenient transaction of the business of the Company.

JOINT RESOLUTION.

IN RELATION TO "THE NEW ORLEANS, MOBILE AND CHATTANOOGA RAILROAD COMPANY, A CORPORATION OF THE STATE OF ALABAMA.

Be it resolved by the Senate and House of Representatives of the State of Louisiana in General Assembly convened, That there be, and is hereby, granted to "The New Orleans, Mobile and Chattanooga Railroad Company," a corporation of the State of Alabama, the right to enclose and occupy for its purposes and uses, in such manner as the directors of said Company may determine, that portion of the levee, batture, and wharf, in the city of New Orleans, between the street laid out between Pilie street and the Mississippi river, and from Calliope street to the lower line (about three hundred and fifty five feet below Calliope street) of the batture rights owned by said Company, and no steamship or other vessel shall occupy or lie at said wharf, or receive or discharge cargo thereat, except by and with the consent of said Company; and all steamships or vessels discharging or receiving cargo at said wharf for said Company, or any steamships or vessels using said wharf by and with the consent of said Company, and not receiving or discharging cargo at, or occupying, any other wharf in the city of New Orleans, shall be exempt from the payment of all levee and wharf dues to the city of New Orleans. Said wharf shall be maintained and kept in repair by said Company.

Be it further resolved, etc., That all laws and parts of laws, and all ordinances and parts of ordinances, conflicting with the provisions of this joint resolution are hereby repealed, so far as they affect the provisions of this joint resolution.

Be it further resolved, etc., That this joint resolution shall take effect from and after its passage.

CHAS. W. LOWELL, *Speaker of the House of Representatives.*

OSCAR J. DUNN, *Lieut.-Gov'r and President of the Senate.*

Approved March 6th, 1869.

H. C. WARMOTH, *Governor of the State of Louisiana.*